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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

SPECIAL WASTE AND MARKET DEVELOPMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

SIERRA HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 10, 2002

1:30 P.M.

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

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Dan Eaton

Michael Paparian

David A. Roberti

STAFF

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Terry Jordan, Deputy Director

Kathryn Tobias, Chief Counsel

Patty Wohl, Deputy Director

John Blue

Deborah Borzelleri

Tom Estes

Nate Gauff

Martha Gildart

Jerry Hart

Jan Howard

Neal Johnson

Jim La Tanner

Michelle Marlowe-Lawrence

Bill Orr

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INDEX

	PAGE
Roll Call	1
A. Waste Prevention and Market Development Deputy Director's Report	2
B. Consideration of Award for East End Project Waste Tire Application Grant to State and Consumer Services Agency	9
Motion	14
Vote	15
C. Consideration of Award for Golden Gate Concourse Waste Tire Application Grant to the City of San Francisco	15
Motion	16
Vote	17
D. Consideration of the Recycling Market Development Revolving Loan Program Application for Chamlian Enterprises Inc	17
Motion	20
Vote	21
E. Consideration of the Recycling Market Development Revolving Loan Program Application for Kroeker Inc.	21
Motion	22
Vote	23
F. Consideration of the Recycling Market Development Revolving Loan Program Application for Regale Corporation	23
G. Consideration of Completion of the 1996 Rigid Plastic Packaging Container Compliance Agreement for Pennzoil-Quaker State Company and all Subsidiaries	23
Motion	25
Vote	26
H. Discussion of Results o RPPC Compliance Certification for 1997, 1998 and 1999	29

INDEX CONTINUED

I.	Discussion Regarding Appropriate Action for Product Manufacturers that Sell a Small Quantity of Rigid Plastic Packaging Containers into the California Marketplace	45
J.	Consideration of Scope of Work for Risk Assessment of Vinyl Chloride in Buildings and Building Materials	73
	Motion	75
	Vote	75
K.	Consideration of the OEHHA as contractor to conduct Risk Assessment of Vinyl Chloride in Buildings and Building Materials	75
	Motion	76
	Vote	76
L.	Consideration of Revised Scope of Work for the Revised Native American Intergovernmental Greening Project	78
M.	Consideration of Humboldt State University as Contractor for the Revised Native American Intergovernmental Greening Project	78
N.	Consideration of Scope of Work for the SABRC Program Audit	78
O.	Consideration of Contractor for the SABRC Program Audit	78
P.	Special Waste Deputy Director's Report	90
Q.	Consideration of Proposed Applicant Eligibility, Project Eligibility, Scoring Criteria, and Evaluation Process for FY 2002/2003 Tire Product Commercialization and Research Grant Program	150
R.	Consideration of Scope of Work for the Evaluation of Rubberized Asphalt Concrete Application Process Contract	112
S.	Consideration of Contractor for the Evaluation of Rubberized Asphalt Concrete Application Process Contract	112

INDEX COINTINUED

T.	Consideration of Contractor for the Evaluation of the Northern and Southern California Rubberized Asphalt Concrete Technology Centers Contract	120
U.	Consideration of Concepts to be Funded from the Reallocation of Unused FY 2001/2002 Waste Tire Management Program Funds	121
V.	Consideration of Award for Waste Tire Enforcement Grant to California District Attorneys Association Circuit Prosecutor Project for Fiscal Year 2001/2002	123
W.	Consideration of the California State University, Sacramento as Contractor for the 2002 Used Oil Recycling Forum Contract	91
	Motion	92
	Vote	92
X.	Discussion of Draft Report: An Analysis of Subsidies and other options to Further California Tire Recycling Markets	93
Y.	Consideration of the Scope of Work for a Feasibility Study for a Cross-Disciplinary California Tire Research Center	105
	Motion	111
	Vote	111
Z.	Consideration of the OEHHA as Contractor for a Feasibility Study for a Cross-Disciplinary California Tire Research Center	105
	Motion	112
	Vote	112
	Public Comment	186
	Adjournment	186
	Reporter's Certificate	187

1 PROCEEDINGS

2 CHAIRPERSON JONES: Good Afternoon.

3 We're going to call the June 10th Committee
4 Meeting of Special Waste and Market Development to order.

5 Jeannine, could you call the roll.

6 SECRETARY BAKULICH: Eaton?

7 COMMITTEE MEMBER EATON: Here.

8 SECRETARY BAKULICH: Paparian?

9 COMMITTEE MEMBER PAPARIAN: Here?

10 SECRETARY BAKULICH: Roberti?

11 Jones?

12 CHAIRPERSON JONES: Here.

13 Yeah. Mr. Paparian, welcome to our Committee as
14 a new Committee member.

15 COMMITTEE MEMBER EATON: The theme song is called
16 "Working in a coal mine," that and planning.

17 CHAIRPERSON JONES: Anybody that's got any cell
18 phone or pager, please shut it off during this meeting.

19 And then if anybody needs to speak on an item,
20 there are speaker slips back there. Give them to Jeannine
21 up until a certain amount of time, and then I think Peggy
22 is going to take over for her.

23 Speaking of mining, I think they're going to mine
24 her teeth or something.

25 We do have a couple of items, Martha, that we

1 don't have -- 57 and 58 that we don't have anything on.
2 So we won't be considering those. But you can, at that
3 time, give us an explanation of what's going on. But
4 there's no way the Committee can make a recommendation.

5 And with that, are there any ex partes?

6 Mr. Eaton?

7 COMMITTEE MEMBER EATON: I'm up to date. Thank
8 you.

9 CHAIRPERSON JONES: Mr. Paparian?

10 COMMITTEE MEMBER PAPARIAN: I'm fine.

11 CHAIRPERSON JONES: Okay. As am I.

12 I will turn it over to Patty Wohl.

13 DEPUTY DIRECTOR WOHL: Good afternoon. Patty
14 Wohl, Waste Prevention and Market Development Division.

15 I have a couple of quick comments. One, I wanted
16 to mention to the Committee that we had the Zone
17 Administrator training on June 6th and 7th last week in
18 Palm Desert. The workshop focus was on environmental
19 justice, basically: What is it? How different
20 communities within the State are dealing with it. And how
21 it could be incorporated into the RMDZ program.

22 We'd like to thank Board Member Medina, who was
23 on a panel, as well as Deb Borzelleri. And then we had
24 Romel Pasquel from Cal EPA participating in the workshop
25 activities. And Linda Moulton-Patterson also attended,

1 which gave the ZA's an opportunity to speak with her.

2 The second issue I wanted to cover is the -- in
3 the past Mr. Eaton had asked us to bring our
4 recommendations back for the audits that we would do on
5 the State agency buy-recycled campaign.

6 So I'd like to propose a list for the Committee
7 members on the audits for the State agency buy-recycle to
8 see if they fit who you think we should be looking at.

9 We did talk with the AB 75 staff, so we've
10 attempted not to duplicate at this point.

11 So our five recommendations are the Department of
12 Transportation, the Department of Education, the
13 Department of Corrections, the Department of Mental
14 Health, and the Department of Motor Vehicles.

15 So I guess we'd like to get your comments on that
16 if you feel like that's a good first set of audits to do.
17 And then we're going to be coming back with
18 recommendations for the RPPC program, the trash bags and
19 news print.

20 So how do you feel about those five?

21 CHAIRPERSON JONES: Members?

22 COMMITTEE MEMBER PAPARIAN: There are certainly
23 some challenging ones. Would it be your intent just to do
24 the headquarters of, say, CalTrans and Corrections or all
25 their facilities?

1 DEPUTY DIRECTOR WOHL: I think we'd like to do
2 some of the regional offices, too.

3 COMMITTEE MEMBER PAPARIAN: Yeah, I mean just for
4 -- for your sake, you might just want to randomly pick a
5 few since in both those cases they have quite a few -- I
6 mean, if you're able to do it, fine; but it might stretch
7 you pretty thin to try to do all their facilities.

8 DEPUTY DIRECTOR WOHL: Right.

9 We just want to at least see how they interact
10 between the regional and the headquarters. So, like you
11 said, at least one or two from their field offices.

12 CHAIRPERSON JONES: Any questions?

13 COMMITTEE MEMBER EATON: Is that on corrections?

14 DEPUTY DIRECTOR WOHL: And he was saying
15 transportation too, yeah. Probably those two would be the
16 big ones that would have the field office impact.

17 COMMITTEE MEMBER EATON: Well, each have
18 delegated authority. So first you have to check who has
19 the delegated authority, because that's what happens with
20 regard to those offices.

21 And why not General Services, which is the
22 largest procurement?

23 DEPUTY DIRECTOR WOHL: I guess I'd defer to Bill.
24 Did you guys check with that one?

25 COMMITTEE MEMBER EATON: Because they incorporate

1 whatever -- we've got the five largest, you know, in terms
2 of independent authority. But then General Services, it's
3 my understanding -- whatever those other larger agencies
4 do not have, you know, control over, then General Services
5 fills the void for like Board of Eq, Franchise Tax Board,
6 all of the paper mongers, you know, and those. And every
7 time we have to purchase anything, we have to go through
8 General Services. So it would seem to me that at some
9 point General Services would be appropriate.

10 MR. ORR: Yeah, I -- my name is Bill Orr, Waste
11 Prevention/Market Development Division.

12 I think the reason that we opted not to audit
13 General Services is that basically we're relying on
14 General Services' audit authority to do these audits, and
15 we felt like it would sort of be like they're auditing
16 themselves, that the audit authority that we'd previously
17 listed in the Board agenda was going to piggyback on DGS's
18 audit authority. And so that was why we opted against
19 auditing DGS under this particular round.

20 COMMITTEE MEMBER EATON: Do we know what they're
21 going to audit under their authority?

22 MR. ORR: We will be developing the auditing
23 procedures with the State Controller's Office for audit.

24 COMMITTEE MEMBER EATON: No. You said that
25 General Services has their own audit process.

1 MR. ORR: Right.

2 COMMITTEE MEMBER EATON: Do we know what they're
3 going to audit? Because if we know what they're going to
4 audit, then that would also fill into whether or not
5 they're auditing any of the other agencies you just spoke
6 of. If not, we would know what they're going to audit.
7 If they weren't going to audit anything, then we would
8 probably want to audit them even though they have audit
9 authority.

10 So wouldn't it be best to check and see what
11 they're going to audit? Are they going to exercise that
12 audit authority, is the issue? And I think before we make
13 a blank statement that we're not going to audit them, we
14 ought to find out what it is they are going to audit, if
15 they're going to audit at all.

16 MR. ORR: Okay. I believe the authority that
17 we're using is their delegation review authority, which is
18 basically the authority that DGS uses when they review how
19 much money you can buy certain items on. And we have been
20 working with them to ask certain questions.

21 It sounds like we maybe need to follow up with
22 you a little bit on what you're thinking in terms of that
23 chain of audit and get back to you on that.

24 COMMITTEE MEMBER EATON: I'm just thinking that
25 General Services is the largest procurement. And we're

1 not going to audit them, but rather we're going to leave
2 it up to them to audit themselves or audit what they
3 recommend under their programs. And all I'm saying is
4 that before we make that assumption, wouldn't it be best
5 to find out if they are going to exercise that authority?
6 And then maybe bring them back either at a later time or
7 something as opposed to say we're not going to audit them.
8 That's all I'm trying to get at. You asked if that was a
9 list -- was sufficient.

10 I'm just trying to find out what are they going
11 to do. Because if you realize that -- my understanding is
12 they have procurement for well over 50 percent of all the
13 goods established. So wouldn't that be also prime
14 territory to find out what we are, you know, looking at?
15 And if we don't know what they're going to audit -- yes,
16 they may have -- you know, a lot of people have audit
17 authority. But whether they choose to exercise that is a
18 different issue. And that's all I'm trying to find out.

19 MR. ORR: Sure. Okay.

20 CHAIRPERSON JONES: Okay. So the plan is going
21 to be that you're going to look into that and then get
22 back --

23 MR. ORR: I think we need to follow up with DGS.

24 CHAIRPERSON JONES: Okay. Good.

25 DEPUTY DIRECTOR WOHL: So I guess the question

1 is -- we could do these five. The debate is whether you
2 want to add General Services to that list?

3 Okay.

4 COMMITTEE MEMBER EATON: I'd like to find out
5 what they're planning on doing with regard to -- you know,
6 you're right, we shouldn't have any duplication or cause
7 unnecessary paperwork. But if they're not going to go and
8 do that, and if so, maybe they're, you know -- they have a
9 way of always auditing the same organizations that seem to
10 have glowing records, which we all know of. The question
11 is what aren't they auditing. And that's all I'm trying
12 to find out.

13 DEPUTY DIRECTOR WOHL: Okay.

14 COMMITTEE MEMBER EATON: Perhaps Mr. Sobel can
15 answer that.

16 DEPUTY DIRECTOR WOHL: So that's actually it for
17 my comments. So we can move right into the agenda, if you
18 want.

19 CHAIRPERSON JONES: Okay.

20 DEPUTY DIRECTOR WOHL: Depending on the
21 Committee's preference, Agenda Item B and C are actually
22 tire fund items. So if you want to just take them in
23 order, we'd be happy to do those now.

24 CHAIRPERSON JONES: Yeah, because it's your staff
25 that's doing the work on it, so go ahead.

1 DEPUTY DIRECTOR WOHL: Right, my staff will be
2 presenting.

3 So then let's just move into agenda Item B, which
4 is Item 87 in your Board book: Consideration of award for
5 East End Project Waste Tire Applications Grant to State
6 and Consumer Services Agency.

7 And Tom Estes will present.

8 MR. ESTES: Good afternoon, Mr. Jones, Mr.
9 Paparian, and Mr. Eaton.

10 Agenda Item 87, consideration of award for East
11 End Project Waste Tire Applications Grant to State and
12 Consumer Services Agency, is basically being brought
13 forward as a result of your last Board meeting in May,
14 where the Board unanimously adopted Resolution 2002-213,
15 which reallocated unused current fiscal year waste tire
16 management program funds.

17 Specifically in this issue the Board reallocated
18 \$250,000 to the State and Consumer Services Agency for
19 east end tire-derived sustainable feature enhancements.

20 This agenda item presents the proposed grant
21 award to State and Consumer Services for use of recycled
22 tire rubber in construction of the east-end complex. This
23 grant will advance the use of California waste and used
24 tires by incorporating them into rubberized asphalt,
25 concrete, playground mats, and entry and walk-off mats.

1 The funding breakdown is \$220,000 for the rack,
2 \$20,000 for the child care facility and approximately
3 \$10,000 for the mats.

4 The RAC portion of this contract or this grant
5 will be increased from what was initially proposed at
6 38,000 square feet and will increase to 305,000 square
7 feet.

8 I believe -- do you guys have this chart?

9 You'll notice in the sort of black and gold
10 hashed marks, they pick it up at 14th street, just south
11 of Capitol Park, and carry it all the way over to 17th
12 Street, go north to L Street, come back around the
13 two-block radius of what's known as Blocks 171 through
14 174, and then come all the way down and encompass Block
15 225 and bisect the other blocks on 16th street.

16 I think Ms. Gildart is going to be happy because
17 she'll be riding home on RAC on her bicycle. That was an
18 important thing, and so, anyway, that looks like a nice
19 enhancement to the project.

20 What they had initially proposed to do was the
21 gold that's running horizontal effectively encompassing
22 what was once Capitol Avenue.

23 Funds -- as I said before, the funds we'll also
24 use for playground surface mats and the -- playground
25 surfacing in the child-care facility, and they will also

1 install mats made of recycled tires throughout the
2 complex.

3 As far as options for the Board, you can approve
4 the proposed grant award and adopt Resolution 2002-358;
5 you can revise it; or you can disapprove the proposed
6 award. We recommend that you approve Option 1 and adopt
7 Resolution 2002-358.

8 Any questions?

9 COMMITTEE MEMBER EATON: Just one.

10 Will they be working with our northern California
11 RAC center? Because my understanding is this is the first
12 time they've done any of this work. So, the contractor
13 that is doing the work I don't think has any familiarity
14 with rubberized asphalt. So if it's going to be a pilot
15 project, wouldn't it behoove all of us to make sure that
16 they have the technical expertise to see that it succeeds,
17 as opposed to having a project wherein there are problems
18 due to the application process of the actual material? So
19 do we have that straightened out, do we know?

20 MR. ESTES: Yeah, we can ensure that.

21 CHAIRPERSON JONES: Martha is nodding her head
22 "yes."

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
24 Martha Gildart with the Special Waste Division.

25 I believe they've been talking to Theron about

1 sources and application. And we can make that a point of
2 the RAC center's requirements to work regularly with them
3 through the project.

4 COMMITTEE MEMBER EATON: Well, I mean -- I just
5 want to make sure that -- you know, they get the money and
6 then they go ahead, and we never actually see what they do
7 and we'll have a problem that they can't apply it. The
8 whole idea here is to educate them so that maybe they'll
9 utilize it in the future on all of the other State
10 projects that they're involved with. And that's what I'm
11 just trying to do, is to make that as part of the
12 condition of the money so that there actually is a proper
13 application. Mr. Jones is real familiar with --

14 CHAIRPERSON JONES: Absolutely.

15 Martha, you said that you'd make it a requirement
16 on the tech center. But we can also make it a requirement
17 on this grant, that they work with the northern
18 California, that -- will that work?

19 MR. ESTES: That'll take care of it.

20 Mike is sitting in the audience. He's the
21 Project Manager. He's nodding his head in agreement.

22 CHAIRPERSON JONES: Okay. Mr. Paparian, any
23 questions?

24 COMMITTEE MEMBER PAPARIAN: No, I'm ready to move
25 it.

1 CHAIRPERSON JONES: Go ahead.

2 Oh, I've got one speaker's slip. Dr. Barry
3 Takallou.

4 DR. TAKALLOU: Good afternoon, Members of the
5 Board.

6 I just run the quick math. Based on 305,000
7 square feet each, an inch-and-a-half thickness, this
8 project is going to use approximately 3,000 tons of
9 rubberized asphalt. In each ton of rubberized asphalt we
10 are recycling two-and-a-half tires. That's about 7,500
11 tires. Based on a \$220,000 allocating for rubberized
12 asphalt, every tire is going to cost \$29 for every tire
13 that goes on this project to recycle.

14 And based on AB -- SB 876, which was the plan for
15 research -- and I don't -- I'm just wondering what kind
16 of -- what new things are we going to learn from this when
17 you're spending \$29 per tire to recycle.

18 That was just my comment. I'm wondering, is
19 there any research that the public is going to learn from
20 this, or is it just going to cost \$29 for every tire we're
21 going to recycle in this project?

22 Thank you.

23 DEPUTY DIRECTOR WOHL: Patty Wohl.

24 I think I'd like to remind the Board that we did
25 include sign-in to that scope of work. So there would be,

1 you know, a public display to anyone who walks there or
2 drives there, that they would see what they're driving on,
3 just as an added point.

4 CHAIRPERSON JONES: Right. And I also think that
5 as the East End Project is a landmark green project, it's
6 going to serve as a learning center for all State agencies
7 and local government, and it won't be the first time we've
8 ever spent \$29 per tire on a project, believe me. We do
9 it all the time. And you know we do it all the time,
10 because you get some of those contracts, or you provide
11 the material for some of those projects.

12 Mr. Paparian.

13 COMMITTEE MEMBER PAPARIAN: Yeah. I'm ready to
14 move Resolution 2002-358 regarding the award for the East
15 End Project Waste Tire Applications Grant.

16 CHAIRPERSON JONES: Okay.

17 COMMITTEE MEMBER EATON: Second.

18 CHAIRPERSON JONES: And Mr. Eaton will second.

19 We've got a motion by Mr. Paparian, a second by
20 Mr. Eaton.

21 Would you call the roll.

22 SECRETARY BAKULICH: Eaton?

23 COMMITTEE MEMBER EATON: Aye.

24 SECRETARY BAKULICH: Paparian?

25 COMMITTEE MEMBER PAPARIAN: Aye.

1 SECRETARY BAKULICH. Jones?

2 CHAIRPERSON JONES: Aye.

3 COMMITTEE MEMBER PAPARIAN: Would this be
4 appropriate for fiscal concurrence?

5 CHAIRPERSON JONES: Consensus.

6 Committee consensus on fiscal matters, right? Is
7 that how we said it?

8 COMMITTEE MEMBER EATON: You're one member short.

9 CHAIRPERSON JONES: Yeah, but we're three full,
10 and that was our policy, if we're three for three. Is
11 that -- are you okay with it?

12 Okay. So moved.

13 All right. Item 88 or whatever the heck it is.

14 DEPUTY DIRECTOR WOHL: Agenda Item C.

15 Consideration of Award for Golden Gate Concourse Waste
16 Tire Application Grant to the City of San Francisco.

17 And Tom will present this one also.

18 MR. ESTES: Again, Item 88 basically follows up
19 on the action that the Board took in May in its
20 reallocation item of the unused current fiscal year waste
21 tire funds. And they adopted Resolution 2002-213. In
22 this instance the Board reallocated \$25,000 to the City of
23 San Francisco for the Golden Gate Concourse underground
24 parking facility.

25 This agenda item presents the proposed award to

1 the City of San Francisco.

2 This grant will incorporate used tires -- waste
3 and used tires into construction of a public walkway using
4 recycled tire pavers and tile in the Golden Gate Concourse
5 underground parking facility which is located adjacent to
6 Golden Gate Park.

7 The underground parking facility is one of ten
8 pilot projects required by the City of San Francisco's
9 resource-efficient building ordinance. It will be a
10 demonstration project for city staff, the Board of
11 Supervisors, other local governments, and to the public.

12 We're asking that the Board approve Option 1,
13 which is -- and adopt Resolution Number 2002-359.

14 CHAIRPERSON JONES: Questions of any of the
15 members?

16 Mr. Eaton.

17 COMMITTEE MEMBER EATON: I'll move we adopt
18 Resolution 2002-359.

19 COMMITTEE MEMBER PAPARIAN: Second.

20 CHAIRPERSON JONES: It's been moved by Mr. Eaton,
21 seconded by Mr. Paparian, to concur with 2002-359.

22 Please call the role.

23 SECRETARY BAKULICH: Eaton?

24 COMMITTEE MEMBER EATON: Aye.

25 SECRETARY BAKULICH: Paparian?

1 COMMITTEE MEMBER PAPARIAN: Aye.

2 SECRETARY BAKULICH: Jones?

3 CHAIRPERSON JONES: Aye.

4 Is it the wishes of the Committee to put this on
5 Committee consensus for fiscal consideration?

6 COMMITTEE MEMBER EATON: Yes.

7 COMMITTEE MEMBER PAPARIAN: Yes.

8 CHAIRPERSON JONES: Okay. Thank you.

9 Item number --

10 DEPUTY DIRECTOR WOHL: -- 75 or Agenda Item D.

11 CHAIRPERSON JONES: Yeah, Item D, 75.

12 DEPUTY DIRECTOR WOHL: Consideration of the

13 Recycling Market Development Revolving Loan Program

14 application for Chamlian Enterprises, Inc., dba Chamlian

15 Textiles.

16 And Jim La Tanner will present Agenda Item D and
17 E.

18 MR. LA TANNER: Board Agenda Item 75 -- this is

19 Jim La Tanner with the RMDZ Loan Program -- presents a

20 loan application for Chamlian Enterprises. They're

21 located in Fresno, which is in the Fresno RMDZ Zone.

22 They've applied for a \$2 million loan for equipment only.

23 The company basically collects textiles,

24 clothing, and so forth from prisons and sources; recycles

25 some of that by shipping it overseas to third-world

1 countries; and takes the rest and makes carpet fiber and
2 other products out of it.

3 As a result of this loan, it will provide
4 additional equipment to divert an additional 6,000 tons
5 per year, and will create approximately 40 new jobs for
6 the company.

7 The company itself has the funds to finance the
8 balance of the project.

9 The Loan Committee did meet or will meet and
10 approve the loan. If there's any conditions, we'll state
11 that at the Board meeting.

12 Staff recommends approval of Resolution Number
13 2002-348 to Chamlian Enterprises in the amount of \$2
14 million.

15 CHAIRPERSON JONES: Question, Mr. Paparian?

16 COMMITTEE MEMBER PAPARIAN: Yeah, thank you, Mr.
17 Chairman.

18 Mr. La Tanner, you just said that the increase is
19 6,000?

20 MR. LA TANNER: Yes, there's a --

21 COMMITTEE MEMBER PAPARIAN: Does that mean what
22 we have in our agenda packet as --

23 MR. LA TANNER: There was a revised agenda. The
24 original agenda item showed an increase of 26,000.

25 COMMITTEE MEMBER PAPARIAN: So the 26,000 is now

1 the total?

2 MR. LA TANNER: Correct.

3 COMMITTEE MEMBER PAPARIAN: And the 300
4 presumably then is the total job increase of forty?

5 MR. LA TANNER: Yes.

6 COMMITTEE MEMBER PAPARIAN: Okay. And then just
7 one other comment.

8 Mr. Simpson, forty jobs, 6,000 tons in Fresno.
9 Need I say more?

10 ASSISTANT DIRECTOR SIMPSON: No, sir, you don't.

11 CHAIRPERSON PAPARIAN: Thank you.

12 CHAIRPERSON JONES: Before we have a motion -- I
13 may have been talking to one of my fellow Board members.
14 You did say that the Loan Committee won't meet until --

15 MR. LA TANNER: They're going to meet --

16 CHAIRPERSON JONES: -- just prior to the Board --

17 MR. LA TANNER: -- June 13th, Thursday, at 10:30.

18 CHAIRPERSON JONES: So we have a couple of loans,
19 I think --

20 MR. LA TANNER: Two loans.

21 CHAIRPERSON JONES: -- two loans in front of us.

22 So I think both of these -- if the Committee so
23 desires to put these forward, they're going to be
24 conditional that the Loan Committee approves?

25 MR. LA TANNER: Yes, that's in the resolution

1 also.

2 CHAIRPERSON JONES: It is in the resolution?

3 MR. LA TANNER: Yes.

4 CHAIRPERSON JONES: Okay.

5 DEPUTY DIRECTOR WOHL: Yeah, I think you could
6 basically put them on fiscal -- or committee consensus;
7 and then if I had a comment, I'd take it to the Board and
8 we could pull it at that time if you wanted to have a
9 further discussion based --

10 CHAIRPERSON JONES: Okay. I just wanted to make
11 sure that we had talked about it in public, that the
12 Committee hadn't met yet on this.

13 DEPUTY DIRECTOR WOHL: Sure.

14 CHAIRPERSON JONES: Is there a motion?

15 COMMITTEE MEMBER PAPARIAN: I'll move adoption of
16 Resolution 2002-348.

17 CHAIRPERSON JONES: I'll second.

18 We have a motion and a second to adopt Resolution
19 2002-348 for a loan to Chamlian Enterprises in the amount
20 of \$2 million, conditional on the Loan Committee also
21 approving this loan.

22 Would you call the roll.

23 SECRETARY BAKULICH: Eaton?

24 COMMITTEE MEMBER EATON: Aye.

25 SECRETARY BAKULICH: Paparian?

1 COMMITTEE MEMBER PAPARIAN: Aye.

2 SECRETARY BAKULICH: Jones?

3 CHAIRPERSON JONES: Aye.

4 And is it the wish of the Committee to put this
5 on Committee consensus for the Board meeting?

6 COMMITTEE MEMBER PAPARIAN: Provided a positive
7 outcome of the Loan Committee, yes.

8 CHAIRPERSON JONES: Absolutely.

9 Okay, so ordered.

10 Go ahead, Mr. La Tanner.

11 MR. LA TANNER: Okay. Agenda Item 76 presents a
12 loan applicant for Kroeker, Inc. Kroeker obtained their
13 first loan in March '98 in the amount of \$640,000. That
14 was to fund equipment for their wood waste recycling
15 equipment.

16 This loan request is \$950,000 for a rock-crushing
17 plant. The company is in the demolition field. They're
18 located in Fresno, within the Fresno RMDZ.

19 The company is expanding and taking on additional
20 materials that previously they would ship to the landfill.

21 This loan is entirely equipment purchase. The
22 company has the funds to finance the balance of the loan
23 request.

24 This will divert an additional 197,800 tons of
25 asphalt and concrete from the landfill and create an

1 additional ten jobs.

2 Loan Committee will meet on June 13th, and the
3 results will be presented at the Board meeting.

4 P&E has reviewed the project and determined a
5 solid waste facilities permit is not required because the
6 site will be an inert debris recycling center.

7 Staff recommends the Board approve Resolution
8 2002-4820 -- check that -- 349 -- that's a typo on the
9 agenda item -- in the amount of \$950,000 to Kroeker.

10 CHAIRPERSON JONES: Okay. Any questions for Mr.
11 La Tanner?

12 And I know in the agenda item -- they're doing
13 fine under their original commitment with us?

14 MR. LA TANNER: Yes, their first loan they made
15 every payment as agreed by the first of the month.

16 CHAIRPERSON JONES: All right. Do I hear a
17 motion?

18 COMMITTEE MEMBER EATON: I'll move that we adopt
19 Resolution 2002-349, with the same conditions as the
20 previous agenda item with respect to both the Loan
21 Committee approval as well as the Committee consensus.

22 COMMITTEE MEMBER PAPARIAN: Second.

23 CHAIRPERSON JONES: Okay. We have a motion by
24 Mr. Eaton, a second by Mr. Paparian, to approve Resolution
25 2002-349.

1 Could you call the roll.

2 SECRETARY BAKULICH: Eaton?

3 COMMITTEE MEMBER EATON: Aye.

4 SECRETARY BAKULICH: Paparian?

5 COMMITTEE MEMBER PAPARIAN: Aye.

6 SECRETARY BAKULICH: Jones?

7 CHAIRPERSON JONES: Aye.

8 And I'm assuming that the members are comfortable
9 with putting this on Committee consensus?

10 COMMITTEE MEMBER PAPARIAN: Yes.

11 COMMITTEE MEMBER EATON: Yes.

12 CHAIRPERSON JONES: All right. Pass this
13 through. It will be on consensus.

14 And I think Mr. Paparian is looking out at Mr.
15 Simpson again.

16 COMMITTEE MEMBER EATON: As part of the motion,
17 with the same conditions as previously --

18 CHAIRPERSON JONES: Right. I apologize.

19 Okay. Item 77 or F was pulled.

20 Seventy-eight or Item G in this Committee is
21 consideration of the completion of the RPPC compliance
22 agreement with Pennzoil-Quaker State.

23 DEPUTY DIRECTOR WOHL: Yes. And Jan Howard will
24 present.

25 MS. HOWARD: Good afternoon, Mr. Jones, Mr.

1 Eaton, and Mr. Paparian. I'm Jan Howard with the Plastics
2 Recycling Technology Section.

3 The item requests your consideration of
4 completion of the 1996 Rigid Plastic Packaging Container
5 Compliance Agreement for the Pennzoil-Quaker State Company
6 and all subsidiaries.

7 The Board previously approved the Pennzoil
8 compliance agreement at its October 1999 meeting. That
9 compliance agreement required Pennzoil to follow specific
10 tasks to achieve compliance during the period July 1
11 through December 31, 2000.

12 Although Pennzoil used post-consumer resin in
13 many of its containers at an overall average of 24.76
14 percent for the specified period, they did not achieve the
15 25 percent required by law.

16 The Board at its April 2001 meeting deemed
17 Pennzoil out of compliance, directed staff to extend the
18 compliance agreement, and required Pennzoil to submit
19 certification for calendar year 2001.

20 As required, Pennzoil submitted certification and
21 has achieved compliance with the law by using 25.37
22 percent post-consumer resin based on national averaging of
23 all their rigid plastic packaging containers.

24 This 25.37 percent represents approximately 17.2
25 million pounds of post-consumer resin.

1 The item presents two options: 1) Consider
2 Pennzoil-Quaker State to have met the terms and conditions
3 of its compliance agreement as extended and the compliance
4 agreement is deemed terminated; and,

5 2) Provide staff with further direction.

6 Since Pennzoil has met the terms and conditions
7 of their compliance agreement, staff requests that the
8 Committee recommend approval of Option 1 and adopt
9 Resolution Number 2002-351.

10 This concludes my presentation, and I'd be happy
11 to answer any questions.

12 CHAIRPERSON JONES: Are there any questions from
13 the Committee members?

14 Is there anybody from Pennzoil or is -- no.

15 Well, congratulations to both Pennzoil and to our
16 staff for achieving compliance there.

17 Anybody in the mood to make a motion?

18 COMMITTEE MEMBER PAPARIAN: Mr. Chairman, I'll
19 move adoption of Resolution 2002-351.

20 CHAIRPERSON JONES: I'll second it.

21 We have a motion by Mr. Paparian for the
22 completion of the RPPC Compliance Order with
23 Pennzoil-Quaker State, second by Jones.

24 Would you please call the roll.

25 SECRETARY BAKULICH: Eaton?

1 COMMITTEE MEMBER EATON: Aye.

2 SECRETARY BAKULICH: Paparian?

3 COMMITTEE MEMBER PAPARIAN: Aye.

4 SECRETARY BAKULICH: Jones?

5 CHAIRPERSON JONES: Aye.

6 COMMITTEE MEMBER PAPARIAN: Consent.

7 CHAIRPERSON JONES: Yes.

8 Mr. Eaton, consent?

9 COMMITTEE MEMBER EATON: Yes.

10 CHAIRPERSON JONES: Okay. Put it over on
11 consent, on a 3-0.

12 And thank you. That was a good one.

13 Item 79 or letter H.

14 DEPUTY DIRECTOR WOHL: Yes. Prior to this item
15 I'd like to just take a minute to give staff some
16 recognition for all their hard work on the compliance
17 certification for 1997, '98 and '99.

18 There's a lot of people that have been working
19 behind the scenes to accomplish this work and they don't
20 always get or want to present the items. But I wanted to
21 take a minute just to tell you about probably the
22 thousands of hours of work that have gone into bringing
23 these items forward, in working with these companies.

24 There's a whole host of tasks, including
25 developing a database; revising certification forms; cover

1 letters; researching and selecting companies for
2 certification; preparing mailings; calling companies;
3 receiving and processing certifications; explaining
4 statutory and regulatory requirements; handling unique
5 company specific situations; preparing and presenting
6 numerous agenda items; preparing enforcement memos;
7 negotiating compliance agreements; designing, modifying,
8 and processing compliance agreements; researching the
9 design, development, and purchase of the RPPC containers
10 to know who to survey.

11 These are just some of the tasks that have been
12 going on in order to bring in particular this batch of 950
13 certifications forward to you, which have resulted in
14 approximately 200 compliance agreements.

15 And this item is designed to kind of give you a
16 history of what's been going on and how it worked and what
17 we learned from it, so to in a way help you make decisions
18 on the next groups that we want to go forward with and how
19 we want to do that work.

20 But just like I said, I really wanted to take
21 time to give some staff recognition. Their names are on
22 the Board right now, and I'd like to ask them to stand.
23 Some of them are not in today, but for those who are.
24 Obviously, you see Bill Orr and John Nuffer quite a bit
25 because they are instrumental in bringing these items

1 forward. But there is a whole host of staff.
2 And we'll start with Gerald Berumen.
3 (Applause.)
4 DEPUTY DIRECTOR WOHL: Maureen Goodall.
5 Jan Howard, who just presented the last item.
6 (Applause.)
7 DEPUTY DIRECTOR WOHL: Sue Ingle.
8 Neal Johnson.
9 (Applause.)
10 DEPUTY DIRECTOR WOHL: Michelle Marlowe-Lawrence.
11 (Applause.)
12 DEPUTY DIRECTOR WOHL: Amber Robinson-Burmester.
13 She's not here today.
14 Edgar Rojas.
15 Elena Yates.
16 (Applause.)
17 DEPUTY DIRECTOR WOHL: She also I don't think is
18 here today.
19 Omar Satter, who's a student.
20 And, of course, who's been instrumental in all
21 her consulting and advising and technical direction, Deb
22 Borzelleri from the legal office.
23 (Applause.)
24 DEPUTY DIRECTOR WOHL: And I mentioned Bill
25 already.

1 These are the people that really have been
2 successful in bringing all these certifications forward
3 and working with these companies diligently and really
4 making us look good, making you look good by the
5 professionalism that they invoke with these companies.

6 So I just wanted to at least do that prior to
7 going into the item. So we'll move right into the item.

8 CHAIRPERSON JONES: Before you start I just want
9 to say one thing.

10 The Pennzoil thing, to get a national average of
11 25.375 post-consumer into their products, that's exactly
12 why this Board sat up there and supported staff a couple
13 years ago when that happened. We had an awful lot of
14 people that were upset and didn't know what we were going
15 to do. The end result is we got that much recycled
16 content plastic into containers throughout the whole
17 United States. It was worth the effort. And you guys do
18 put in a lot of effort. But those are the net results.
19 This is what we're here for.

20 DEPUTY DIRECTOR WOHL: Yeah, it's great.

21 Okay. So with that, I'll move into Agenda Item
22 H, which is Board Item 79, discussion of results of the
23 Rigid Plastic Packaging Container Compliance Certification
24 for '97, '98, and '99.

25 And Neal Johnson will present.

1 MR. JOHNSON: Thank you.

2 (Thereupon an overhead presentation was
3 presented as follows.)

4 MR. JOHNSON: A couple of quick things. If you
5 read through the agenda item, there -- some of the numbers
6 may not have completely jibed between categories. That is
7 partially because this is a bit of an evolving process.
8 The numbers in the item were current as of about the end
9 of April of this year. If we were to do a look at as of
10 today, they'd be slightly different. But I don't think
11 the overall conclusions would change.

12 --o0o--

13 MR. JOHNSON: For the 1997 through '99 combined
14 certification we mailed to 950 companies. We had selected
15 four primary targeted industry groups, which are
16 automotive products, hardware products, hobbies and
17 crafts, and janitorial supplies. Those were industries
18 where we felt there were a significant number of RPPCs
19 used, and so consequently we really looked at those
20 industries.

21 We also had a group of 34 companies that were in
22 the 1996 certification. About half of those were put back
23 in because of the inability to really determine or really
24 support their claim of compliance in 1996. Most of those
25 were due to corporate averaging, and the ability to get

1 data that was completely supportive.

2 --o0o--

3 MR. JOHNSON: Out of the 950 companies we found
4 162 to be in compliance and 177 out of compliance. So
5 it's 17 percent were in and about 19 percent out.

6 Of that, about 50, 52 of the 177 have asked for
7 treatment as either small companies or small quantity
8 generators, and that item will be heard later today.

9 Three hundred seventy-three or 39 percent of them
10 reported they did not use RPPCs or did not sell products
11 in California. And we'll talk a little more about that.

12 Thirty-two had only sold exempt products in this
13 time. Primarily they were ones where the shipping is
14 regulated by -- or hazardous products whose shipping is
15 regulated by the U.S. Department of Transportation's
16 shipping regulations.

17 One hundred twenty-eight have been recommended
18 for inclusion in future certifications. About 45 or 50 of
19 those were in the 2000 certification, which was mailed in
20 late last year, and we are in the process of analyzing
21 those responses.

22 And then 78 were essentially duplicates. They
23 were subsidiaries of apparent divisions of another company
24 or no longer in business or a dba for a company that was
25 otherwise considered.

1 --o0o--

2 MR. JOHNSON: As I said before, 39 percent
3 were -- claimed not to use RPPCs. Of all 950 companies,
4 we had 373 that either -- well, that used RPPCs or no
5 California sales.

6 In the marketplace surveys where we looked at 327
7 that way, we found a much lower percentage of companies
8 that claim they did not have rigid containers or did not
9 sell in California.

10 Now, the 57 RPPCs are generally accounted for by
11 either their clamshells that have been heat sealed, so
12 therefore they're not reclosable once opened. They used
13 metal handles for carrying, and so were not considered to
14 be made entirely a plastic or were at the five gallon
15 level where companies are allowed to essentially opt in or
16 opt out, can choose either the label capacity or the
17 actual volume of the container.

18 There was one company out of those marketplace
19 surveys who said they didn't sell in California, which was
20 kind of interesting because that's where their product was
21 found, and it's a California company no less.

22 --o0o--

23 MR. JOHNSON: In the automotive group we found a
24 higher degree of compliance than elsewhere. Now 48 out of
25 the nearly 290 doesn't speak to a great deal of

1 compliance, but you had 48 that were in, 36 out. Again,
2 we saw a large block of companies, 126, who claimed again
3 not to use RPPCs or not to sell in California.

4 --o0o--

5 MR. JOHNSON: The hardware group, which was the
6 next -- or actually the largest group, we had a little
7 more noncompliance than compliance, 56 in and 57 out. And
8 again a large block, 138, that didn't use plastic
9 containers or didn't sell in California.

10 And the hobbies and crafts, which was the
11 smallest of the targeted groups, with 85, we saw 11 in and
12 22 out, so a much greater percentage of those out of those
13 regulated. And once again, nearly half claimed not to use
14 RPPCs or sell in California.

15 This also included one company that was granted a
16 waiver for a container they brought out in the middle of
17 1999.

18 --o0o--

19 MR. JOHNSON: And then janitorial supplies, which
20 we had about 207 companies. Again, roughly a fifth of
21 those, 48 of them, were out of compliance, a third or so
22 were -- again did not have regulating containers or did
23 not sell in California.

24 Ten of them were exempt products, and most of
25 those were either hazardous materials or containers whose

1 products are regulated under the Fungicide, Insecticide,
2 and Rodenticide act.

3 --o0o--

4 MR. JOHNSON: And then finally for the 34
5 companies out who were either relooks or had been in the
6 '96 certification and how or another part of the company
7 got selected through the processes, here we had eight that
8 were and four were determined to be out. Eight didn't
9 have RPPCs and three exempt and then some others.

10 --o0o--

11 MR. JOHNSON: This slide tries to look at one of
12 the things that really has caused us problems in 1996, and
13 some of the reason why you saw a large number rolled over,
14 but also continues to be a problem. And this is how
15 companies interpret whether they're in or out versus what
16 is actual. In the bold line that says "in compliance,"
17 there were 181 companies that claimed to be in compliance.
18 Only 117 of those actually turned out to be in compliance.
19 Twenty-eight of them were out, 13 didn't have regulated
20 containers, and then a number were -- a handful were
21 exempt and a couple rolled further.

22 One hundred forty-three said they were out. We
23 show 26 of them are currently in compliance. Now, most of
24 those 26 were out of compliance based on the initial
25 submittal and were able to submit 2000 or 2001 data that

1 demonstrated a company was now in compliance. But 103 of
2 them were still out of compliance.

3 And then one of the things that really troubled
4 us, there were 343 that didn't indicate whether they were
5 or were not in compliance or even regulated by the law.
6 So, you know, it's an education process in trying to get
7 industries to understand. That also tells us we need to
8 do a little better job at designing the forms to elicit
9 more -- or responses that are more accurate.

10 --o0o--

11 MR. JOHNSON: The companies were selected by a
12 number of processes. We went to several trade
13 associations, got membership lists; we selected a number
14 of them from the Thomas Register of American
15 Manufacturers. Three hundred twenty-seven were done by
16 marketplace surveys where staff would go to commercial
17 establishments and see what was, in fact, being offered
18 for sale here. Fifty-eight of them were through searches
19 of the internet. Nearly 300 of them for some reason or
20 another did not get coded into the database, so we're not
21 sure exactly how that large block was found.

22 --o0o--

23 MR. JOHNSON: The look at the marketplace
24 surveys, because that was probably the group we felt most
25 comfortable about who they were, and here there's a --

1 again, because data changes over time -- we have 92 of
2 them that were in compliance, and it should have been 87
3 that were out of compliance, not 97.

4 And then 58 had -- although your printed copy
5 probably shows 68 in the no RPPCs or California sales
6 group. Ten of them had exempt products and then about 80
7 are rolled to either future certifications or subsidiaries
8 and divisions.

9 --o0o--

10 MR. JOHNSON: The uncoded group, which is -- I
11 say is a very large group. Here we had essentially as
12 many in as out, but again we had nearly half of the group
13 not regulated at all. So I'm not sure this -- for which I
14 simply don't know how we selected them, I'm not sure this
15 tells us a lot.

16 --o0o--

17 MR. JOHNSON: The trade association groups we
18 essentially got two out for every one we found in. But
19 more so we found again nearly half of them not regulated.

20 --o0o--

21 MR. JOHNSON: And that's true of the Thomas
22 registers, much -- roughly the same type of profile as
23 we'll see with the internet group, again more than half
24 not regulated. The outs are greater than the ins by about
25 a two to one ratio.

1 --o0o--

2 MR. JOHNSON: There are three states in the
3 country that regulate rigid plastic packaging containers,
4 California, Oregon and Wisconsin. And California has the
5 most extensive law. And this -- the only one of them fits
6 currently into the enforcement and compliance arena.

7 But of the companies we had in the certification
8 that are headquartered in those 3 states, 49 were in
9 compliance and 48 were out. So I'm not sure that the
10 people are understanding the law. Clearly, there doesn't
11 seem to be an interest -- well, I don't want to say an
12 interest in complying, but widespread compliance is not
13 seen.

14 And, again, a large block not regulated and then
15 some role in the future certifications.

16 --o0o--

17 MR. JOHNSON: This goes back. And what -- you
18 know, we've now gone through two certification processes.
19 We did one in 1996. We looked at 500 companies and picked
20 over a wide span of American industry. And then the 1997
21 to '99 one which looked at four targeted industries.

22 In the '96 group we found 64 in compliance. And
23 as I said earlier, there were a number of those who we put
24 into this last one. We only found eight out of
25 compliance, one of which the Board conducted a public

1 hearing on, and then seven were in compliance agreements
2 one of which I just recommended approval for earlier
3 today.

4 --o0o--

5 MR. JOHNSON: In the '96 certification nearly 300
6 were -- did not have regulated containers, close to 60
7 percent, whereas this time it was about 50 percent. And
8 also there were nearly 20 percent in the 96 group that had
9 exempt products only.

10 In the '96 group most of the exempts were either
11 food cosmetics or pharmaceuticals, products regulated by
12 the Food and Drug Administration; whereas in the '97 and
13 '99 when they tended to be insecticides, pesticides and
14 hazardous materials we didn't really get too many that fit
15 into the cosmetic group.

16 We put 16 into this certification and then there
17 were 25 that were either out of business, subsidiaries,
18 and division.

19 So we really saw a very different group and in
20 '96 you got a sense of general compliance. Whereas, in
21 the '99 -- '97 to '99 group you get a general sense of
22 noncompliance, consequently we have low compliance
23 agreements.

24 --o0o--

25 MR. JOHNSON: From a staff point of view, one of

1 the big issues, and as you saw earlier, there's a
2 significant number of people who were working on this
3 program, it unfortunately becomes -- is a very labor
4 intensive process. The selection of companies we've found
5 takes about an hour or two hours per company. That
6 includes the market surveys and then calling people to get
7 correct addresses, et cetera. Termination of compliance,
8 which goes from about half hour for just logging the
9 receipt in, making a file, putting in an electronic data
10 base, up to about ten hours per company to analyze the
11 filings, contact the company and get additional
12 information, if necessary, although that -- the upper end
13 can be fairly high, there's one major retailer we spent
14 many, many, many hours dealing with last fall.

15 --o0o--

16 MR. JOHNSON: And then the compliance agreements,
17 which have been the primary enforcement mechanism, we
18 figured they average about 20 hours to execute a
19 compliance agreement, although some of them probably only
20 a few hours and others have been, I guess as Deborah would
21 say, they have taken a lot of time, clearly the earlier
22 ones because of trying to develop the template, figuring
23 out where we could compromise on things, took much more
24 time than the latter agreements.

25 And then we estimate it's taken about 12 hours to

1 monitor the companies, which are the periodic status
2 reports and the final determination of whether they're in
3 compliance.

4 With that, I'll open it up to any questions you
5 have.

6 CHAIRPERSON JONES: Any questions from the
7 members?

8 Mr. Eaton.

9 COMMITTEE MEMBER EATON: You mentioned that you
10 are quite secure with regard to knowledge that we have
11 certain companies that have signed a document under
12 penalty of perjury that claim to not be doing business in
13 California but are based in California. They claim to not
14 have any RPPCs, but yet they're here.

15 Do you have a number of those?

16 MR. JOHNSON: Well, we've found two companies out
17 of the 950 that are in California that claim they don't
18 sell products here, one of which, as I say, was in a
19 marketplace survey. Overall we got about 60 companies
20 that said she didn't sell here. Some of that I think
21 comes out of a general misunderstanding of what is meant
22 by the term "is offered for sale." They tend to look at
23 where they make the transaction. I talked to a major
24 hardware manufacturer in North Carolina fairly early in
25 the process because I was trying to find out who was the

1 contact person. And the gentleman said, "How did you get
2 us?" And I explained. "Well, we don't sell to
3 California." And I said, "Well, I found your products at
4 such" -- "Oh, okay. Yeah, we sell to them." And the
5 transaction occurred in like Kentucky, but it got shipped
6 out through the country.

7 So you get -- you know, major retailers may offer
8 products for sale here, but their distribution center is
9 in Nevada, in Minnesota, Missouri, et cetera. So, you
10 know, these companies tend to look at where they do the
11 actual physical transaction versus where the product is
12 offered for sale. So that's -- I think is a -- somewhat
13 of us educating them and designing the forms better. But
14 it also, I think, probably in some cases is indicative of
15 people not being completely truthful.

16 COMMITTEE MEMBER EATON: So will you be coming
17 back with a consideration item on those that you've found
18 where there is some discrepancy with regard to --

19 MR. JOHNSON: We are going to look at that. That
20 is something we're going to discuss with the legal office.
21 But I think that -- you know, and we -- or alternatively
22 we may consider those as candidates for audits.

23 COMMITTEE MEMBER EATON: Or referral to the
24 Attorney General. Isn't there a criminal statute under
25 that penalty of perjury?

1 MR. JOHNSON: I believe there is.

2 COMMITTEE MEMBER EATON: Okay. Thank you.

3 CHAIRPERSON JONES: Thanks, Mr. Eaton.

4 I think one of the things, too, that you had said
5 was there was so much more lack of compliance when we lump
6 '97, '98 and '99. And if I'm not mistaken, I think it was
7 Mr. Eaton -- was it your idea that --

8 COMMITTEE MEMBER EATON: No.

9 CHAIRPERSON JONES: Well, it was a good idea. I
10 was going to give you some credit.

11 (Laughter.)

12 CHAIRPERSON JONES: I don't know whose idea it
13 was, but it made sense because it got -- I know we went
14 over a thousand -- tried to go after a thousand folks.
15 And based on some of your things -- I think you made the
16 right analysis that maybe the forms got to be -- a couple
17 of check boxes need to be added where you've got to make
18 people think about where their stuff is going. But, you
19 know, clearly it's a good effort.

20 And I think the Board understands that there's a
21 lot of time involved in this. I am grateful the way you
22 guys have laid out the amount of time that it takes,
23 because people need to know that, you know, times 900.

24 But clearly I think you guys are on the right
25 track to keep going, you know, and getting -- we need to

1 find markets for plastic and this is a way to do it.

2 MR. JOHNSON: If I can add one -- back in
3 December when we came to you on an item with regulatory
4 issues, one of the things we identified in that is needing
5 to really work with the trade groups, the industry groups.
6 And we need to really do that beforehand to get both
7 their -- increase their knowledge, but also to potentially
8 improve the responses we get from targeted groups.

9 The other is -- and this goes a little back to
10 Mr. Eaton's. One of the issues we had identified in the
11 regulatory arena that we need to deal with is what is the
12 definition on RPPC. And some of, you know, the 60
13 marketplace survey companies would say they aren't --
14 don't have regulated containers is a little bit indicative
15 of that, particularly I think the metal handle issue,
16 which is something that sort of evolved, not some in the
17 course of dealing with companies that's not in either the
18 statute or the regulations, but evolved. And we're going
19 to really relook at those definitions.

20 The other thing I think we've found particularly
21 with the nonclosable heat -- or the nonreclosable
22 clamshells is when the law was written, those were a very,
23 very minor portion of packaging. Now, they're quite
24 omnipresent and maybe we really need to relook at the
25 regulations and do they fit what the law intended.

1 Thank you now.

2 CHAIRPERSON JONES: Thanks, Neal.

3 Go ahead, Patty.

4 DEPUTY DIRECTOR WOHL: So our thought with this
5 was that we were just bringing it to the Committee. But
6 it's obviously up to your discretion whether you think we
7 should do this at the full Board also.

8 CHAIRPERSON JONES: I think that you've satisfied
9 the interests of the Board by bringing it to this
10 committee.

11 DEPUTY DIRECTOR WOHL: Okay. Great.

12 CHAIRPERSON JONES: We'll include it in our
13 report.

14 Good job.

15 DEPUTY DIRECTOR WOHL: So we'll move on to Agenda
16 Item I and Board Item 80, which is --

17 CHAIRPERSON JONES: Hold on just one second.

18 I'd like the record to show that Senator Roberti
19 is here.

20 Senator, any ex partes?

21 COMMITTEE MEMBER ROBERTI: No ex partes. Thank
22 you.

23 CHAIRPERSON JONES: Okay.

24 DEPUTY DIRECTOR WOHL: Okay. Agenda Item I is
25 discussion regarding appropriate action for product

1 manufacturers that sell a small quantity of rigid plastic
2 packaging containers into the California marketplace.

3 And Michelle Marlowe-Lawrence now will present.

4 MS. MARLOWE-LAWRENCE: Any version you'd like
5 there, Patty.

6 Good afternoon, Chairman Jones and Board Members.
7 For the record, I'm Michelle Marlowe with the Plastics
8 Recycling Technologies Branch. And I'm here to present an
9 item for discussion and hopefully some feedback and
10 direction.

11 Before I begin on this item I just -- a caveat
12 to -- you know, you can see that we've sort of laid the
13 groundwork with previous items in building on Neal
14 Johnson's item. You know, we've learned a few things
15 along the way from these certifications that we've
16 completed, you know, almost three cycles of. And in the
17 first certification, that pool of candidates, we made no
18 assumptions about whether they were regulated or not.

19 You know, that wasn't part of the building of the
20 pool process. We discovered that we wanted to do that the
21 second time and focused on industries that we felt were
22 highly regulated. And as a result, the next time after I
23 present this item we're hoping to add another screen and
24 try to avoid really small companies in the future in
25 designing, you know, the potential pool of candidates.

1 I just wanted to make that point.

2 Okay. So this item is -- we're back as directed
3 by the Board in December of this year to try to resolve
4 three related issues that resulted from implementation of
5 the RPPC law.

6 And this agenda item specifically deals with
7 companies that have reported difficulty in complying
8 because they're a fairly small company or they sell a
9 small quantity of RPPCs into the California marketplace or
10 they sell through a distributorship, which, you know, adds
11 some difficulties to the process. And I'll deal with that
12 in more detail in a moment.

13 As a result of the combined '97 through '99
14 compliance certification, approximately 50 companies
15 indicated that they could not comply for a variety of
16 economic reasons related to the size, location, or nature
17 of their business.

18 These companies reported that their annual
19 procurement of RPPCs was too small and they could not find
20 a container manufacturer interested in their business.

21 This item prevents -- provides several common
22 examples of both small companies using small quantities of
23 RPPCs as well as larger companies with small volume sales
24 into the California marketplace.

25 It also suggests criteria for the Board to use in

1 making case-by-case determinations regarding small company
2 and small volume of sales.

3 Staff is seeking Board feedback regarding how to
4 best handle such companies now and in the future. The
5 December 2000 agenda item explained that there was no
6 basis in current law and regulations to simply exempt
7 companies from complying with the law based on their size
8 or their annual sales.

9 However, the statute does allow the Board to have
10 discretion when considering levying fines and penalties on
11 companies out of compliance with the law.

12 In 1999, the Board adopted penalty criteria for
13 use and guidance in future public hearings for companies
14 found to be out of compliance with the law. And we used
15 that adopted criteria in the one public hearing that we've
16 held thus far for a company out of compliance and
17 unwilling to enter into a compliance agreement with this
18 agency.

19 I'd like to suggest that there are several ways
20 to approach the issues that have been raised by these
21 companies regarding the apparent difficulty to comply; and
22 that in addition to the financial burden and the issue of
23 incidental sales, in both of those cases, I think that
24 contemplation of the intent of the law, which is to
25 stimulate markets for post-consumer resins and the overall

1 impact a company is able to make on the objectives of the
2 law, are really vital issues that deserve Board
3 consideration.

4 The statute provides some guidance in dealing
5 with the issue of small companies and Public Resources
6 Code Section 42310.2(b)(2). And originally this section
7 dealt with food and cosmetic manufacturers before they
8 were permanently exempted. But we think it's important to
9 listen to the language and consider it.

10 Specifically, it says, "When imposing penalties
11 on" -- in this case food and cosmetic manufacturers --
12 "for noncompliance, the Board was to consider the size and
13 net worth of the manufacturer, the impact of the violation
14 on the overall objectives of the chapter, and the severity
15 of the violation."

16 The language suggests that the Legislature
17 envisioned the size of a company, that that could have
18 some relevance in determining how the Board should enforce
19 this law.

20 So, you know, I think that that statute is
21 important to remember that it's there.

22 And there's additional support for considering
23 the company size with regards to enforcement in the
24 governing regulations found in Title 14, CCR Section
25 179-46(d), which states that "the Board may use size of

1 company in determining which product manufactures are to
2 submit certifications. This section provides authority
3 for the Board to determine whether it's appropriate to
4 take further action against companies based on size."

5 Staff suggests using the guidance offered in the
6 statute and regulations to assist in establishing criteria
7 for special consideration.

8 While the first PRC section referenced originally
9 pertained to food and cosmetic companies, which were
10 subsequently exempted, the language still suggests
11 direction from the legislature concerning the importance
12 of considering a company's size and ability to comply as
13 well as the overall impact these companies might have on
14 the objectives of the law.

15 It's the Board's practice to base disposal and
16 transfer fees based on weight and to determine diversion
17 goals by tonnage landfilled or diverted. Accordingly,
18 staff suggests that a pivotal determining factor should be
19 the annual rate of resins entering the California
20 marketplace by the product manufacturer.

21 Additional criteria focused on waste management
22 and recycling issues that should be considered are the
23 number of product lines packaged in RPPCs, the number of
24 regulated and nonregulated RPPCs shipped to the California
25 marketplace, and the resin type and size of the RPPCs

1 shipped into the California marketplace. And that helps
2 staff determine the actual weight, just so you know,
3 because every resin has, you know, different weight,
4 obviously.

5 The following criteria which might also be
6 considered by the Board is currently used by the
7 California Department of General Services for procurement
8 with small businesses. And that those two criteria that
9 we'd like to incorporate are: 1) That it's an
10 independently owned and operated business; and that it's
11 not dominant in its field of operation.

12 So based on defining criteria used by other Board
13 programs and State agencies and the similarity of the
14 companies in this group that are requesting special
15 consideration, we'd like to suggest the following
16 guidelines to assist with the objective consideration of
17 companies requesting special consideration from the Board.

18 Suggested factors that would allow objective
19 consideration we think would include: 1) The number of
20 employees; 2) the ownership structure of the company; 3)
21 the size and net worth of the company; 4) the market share
22 or dominance in its field of operation; 5) the number of
23 product lines, regulated and nonregulated, in RPPCs; resin
24 type and size of all RPPCs shipped into the California
25 marketplace per calendar year; and annual gross sales of

1 products packaged in RPPCs.

2 In addition, for companies that are requesting
3 special consideration based on small volume or incidental
4 sales into California, those companies should provide the
5 seven previous -- the information for the seven previous
6 criteria and two more sets of information: The detailed
7 information regarding the annual sales of all products for
8 claims of incidental sales of specialty products or
9 limited quantity of sales into the California marketplace
10 versus sales to all other locations; and RPPC data and
11 information for all subsidiaries that routinely purchase
12 and use RPPCs for their products.

13 The suggested factors would assist the Board in
14 determining the impact that companies' RPPCs might have on
15 California's landfills or recycling infrastructure as well
16 as assessing a company's ability to comply with the law.
17 While it is understood that small companies ordering --
18 while it's understood that small companies typically do
19 not have direct contact with container manufacturers, it
20 is also understood that companies ordering large numbers
21 of containers, whether or not they are regulated RPPCs,
22 should have some leverage with container manufacturers,
23 including the ability to negotiate modifications to bring
24 their regulated RPPCs into compliance.

25 More comprehensive information regarding a

1 company's entire line of products, their corporate
2 structure, their net worth, and their annual sales would
3 assist in determining a company's ability to comply.

4 Given that, I'd like to now go into the three
5 kind of separate sets of companies that have all asked for
6 special consideration. And they fall into kind of three
7 distinct categories.

8 The first one has to do with small companies.
9 The compliance certification cycles conducted by staff
10 have revealed that small companies do not typically deal
11 directly with container manufacturers and, thus, are
12 unable to specify or require containers that are made with
13 post-consumer content or that they be lightweighted.

14 Minimum run requirements from container
15 manufacturers preclude these companies from dealing
16 directly. And that makes it difficult, if not impossible,
17 for these companies to pursue compliance.

18 Most of these companies obtain their RPPCs
19 through container distributors, suppliers or from one or
20 all of the three major container clearinghouses that exist
21 in the United States.

22 Container manufacturers throughout the country
23 confirm that minimum run, you know, preclude them from
24 dealing directly, and they refer those kinds of requests
25 on to known distributors or suppliers.

1 And the existence of the container
2 clearinghouses, that was unknown to staff before, but it
3 turns out they're used rather extensively within the
4 specialty chemical supply sector. And it complicates the
5 enforcement of the RPPC law.

6 The container clearinghouses are vital for the
7 container manufacturing industry, and also the only way
8 for most small businesses that require plastic containers
9 to actually obtain them. Unfortunately, clearinghouses
10 rarely have information on the actual manufacturer of the
11 containers and, thus, no way of knowing if the container
12 is compliant or not.

13 And those container suppliers and distributors
14 have also indicated to staff that they're rarely given an
15 opportunity to purchase RPPCs with post-consumer content
16 unless they become aware of a company that's going out of
17 business. And, you know, that practice leaves them unable
18 to guarantee a source for their clients of compliant RPPCs
19 in any kind of ongoing way.

20 I'd like to share now -- I have five comments
21 that are extracted from letters that we've received from
22 some of these companies, to give you a sense of their
23 issues.

24 The first one says: "Requiring that small
25 companies comply with the law by converting to compliant

1 RPPCs does not appear to be feasible in most instances.
2 These companies do not order containers in sufficient
3 quantities to deal directly, and they cannot obtain
4 compliant containers.".

5 One example is my favorite example that we talk
6 about in the program a lot is my one-man Internet
7 entrepreneur, who actually is California based, and he has
8 one product packaged in a 16-ounce HDPE plastic container
9 that's regulated by the law. It happens to be a mildew
10 retardant. And he sold 23 quarts of that into California
11 in 1999. And 23 quartz of a 16-ounce HDPE container, the
12 math works out to about 453 grams or a little over two
13 pounds of resin total that year in the form of RPPCs into
14 the California marketplace.

15 And in this case even though he's based in
16 California, he's an Internet company. And we've decided
17 that other areas of the country must have more severe
18 mildew problems than California does, based on his sales,
19 because he -- you know, such a small amount into his own
20 state we thought was peculiar.

21 A Wisconsin-based business with three employees
22 reports a total of 48 HDPE pints sold to California
23 customers, amounting to 1.8 pounds of resin.

24 A New York-based company with eight employees
25 reports 282 PVC clamshell RPPCs amounting to 11 pounds of

1 resin sold in 1999 into California.

2 A fourth company from North Carolina with five
3 employees reports 240 HDPE quarts and 28 one-gallon-size
4 RPPCs with a combined weight of less than 50 pounds of
5 resin in the form of RPPC packaging.

6 And a Michigan company, five people that would
7 have had to purchase 16 years' worth of their current
8 annual supply of containers in order to deal directly with
9 a container manufacturer and specify post-consumer
10 content; and they didn't have the storage capacity, as you
11 might imagine, to store 16 years' worth of their required
12 containers.

13 The second set of companies has to do with
14 companies asking for special consideration based on a
15 small volume of sales or incidental sales into California.

16 Some of these companies are struggling with
17 justifying the increased costs for complying with a law
18 that affects a very small portion of their annual sales.
19 They must now find an economical way to repackage entire
20 product lines in order to comply with the California
21 requirements or to devise a system to separate product
22 intended for California. And either method would
23 substantially increase their packaging costs, their
24 production runs, and their tracking of product.

25 CHAIRPERSON JONES: Michelle, is there a

1 definition for what they consider to be small volume or
2 incidental?

3 MS. MARLOWE-LAWRENCE: No. But we'd like to set
4 up some parameters for that. Yeah, absolutely.

5 CHAIRPERSON JONES: I mean, you know, you sell
6 all the containers in the world and you just have one type
7 that's one percent of what you normally do, that may be a
8 heck of a lot of containers.

9 MS. MARLOWE-LAWRENCE: Absolutely, absolutely.
10 And we had everything from one container to the company
11 that said they only had \$25 million of sales into
12 California and they wanted some special considerations.

13 CHAIRPERSON JONES: Yeah.

14 MS. MARLOWE-LAWRENCE: Okay. So for this set of
15 incidental sales, these companies, you know, are asking
16 for special consideration because they are going to have
17 to develop, you know, a separate system. And instead of
18 buying all their containers, you know, they're going to
19 have to separate and do a lot of different things and it
20 will increase their costs. And I'm going to offer four, I
21 think, fairly strong comments that are offered in some of
22 their letters.

23 The first is: "The Board should be
24 cognizant that if this law is applicable
25 to any company that sells more than one

1 RPPC into California, this will have the
2 effect of deterring thousands of
3 businesses like ours from selling their
4 products to California consumers. We do
5 not believe that that is the intent of
6 this law."

7 The second comment is: "We are a
8 small business in size with global
9 sales. However, the administrative cost
10 of compliance in California prompts us
11 to investigate avoiding the California
12 marketplace rather than complying."

13 The third comment is? "We sell less
14 than 1,200 units of products packaged in
15 RPPCs into California in any given year.
16 If we had to choose between compliance
17 with the California regulations, which
18 would dramatically increase our
19 distribution and administrative costs,
20 or discontinuing our rather small volume
21 of sales into California, we should
22 choose the latter. I'm sure the
23 regulation was not to force companies
24 with such small volumes to make choices
25 like this."

1 And 4th: "We manufacturer vehicle
2 safety lighting and accessories
3 primarily serving the heavy-vehicle
4 markets through a network of equipment
5 dealers and distributors whom we ship
6 products to in bulk, not individually
7 wrapped. We are headquartered in New
8 York, with distribution and
9 manufacturing facilities in
10 Pennsylvania. Sales of our after-market
11 products packaged in RPPCs and sold into
12 the California marketplace represent
13 less than one-tenth of one percent of
14 the total company sales in '99.

15 "Nationwide our total sales of
16 products packaged in RPPCs contributes
17 less than two-tenths of one percent of
18 our annual sales.

19 "Given these financial realities, we
20 cannot justify any costs to redesign
21 packaging. However, we will actively
22 work with our container supplier to
23 encourage proactive involvement in
24 environmentally friendly changes to our
25 packaging in the future."

1 And this is a company that touches to Steve's
2 item -- or comment earlier about, you know, without
3 knowing the overall sales, we don't know if one percent --
4 what that number might be. It sounds small, one-tenth of
5 one percent, but it could be huge.

6 The third set of companies had to do with a few
7 that we snared in this certification, that we hadn't
8 really contemplated before. And these are companies who
9 exclusively use distributorships, including franchise
10 national outlets, and it presents some kind of unique
11 challenges for those companies and staff in terms of, you
12 know, how to handle their issues equitably, because these
13 companies don't directly ship to California.

14 They focus their marketing efforts on these
15 distributorships, and they claim to have no way of knowing
16 where product is being shipped, no way to control
17 shipments into California. And I'm going to offer a
18 couple of comments from this category for your
19 consideration.

20 The first one is: "We are a small
21 family-owned business" -- here we go
22 again -- "with global sales of a variety
23 of consumer cleaning products, many of
24 which find their way to California
25 markets through a network of

1 distributorships. We are located in
2 Ohio, and our marketing efforts focus
3 primarily on these distributorships,
4 with our shipments going directly to
5 distribution centers belonging to our
6 customers.

7 "None of the distribution centers
8 are located in California. And if the
9 businesses we sell products to are
10 selling into the California marketplace,
11 we have no way of knowing this or
12 controlling it. We do not sell product
13 directly; and the financial costs to
14 convert our entire product line to
15 RPPC'w with 25 percent post-consumer
16 resin for our clients who do is cost
17 prohibitive.

18 "Regulations should be modified to
19 address the issue of distributorships,
20 which are common, and place the
21 responsibility for compliance on the
22 entity placing the products into the
23 California marketplace."

24 And second: "We are a
25 Massachusetts-based company with ten

1 employees specializing in electrical
2 products for boats and recreational
3 vehicles. We sell our products to
4 companies that sell boats and other
5 recreational vehicles, and they resell
6 directly to consumers. Our products
7 require strong, transparent packaging,
8 which is currently PVC. East coast
9 container manufacturers report a lack of
10 availability of post-consumer PVC resin;
11 i.e., it is 'nonexistent in this
12 region'" quote-unquote.

13 "Further, the company offers an
14 objection to being forced to use
15 recycled content if they could locate a
16 source, as it degrades the clear quality
17 required by their products.

18 "Converting to PET, a resin that
19 lends itself to clear and transparent
20 packaging, and is more readily available
21 in post-consumer resin, is not an option
22 due to the huge financial costs involved
23 in converting resin types for the
24 regulated packaging.

25 "The resin change would require

1 multiple mold modifications amounting to
2 over \$750,000, in addition to the
3 increased cost per pound for the
4 different resin."

5 And they claim that they couldn't offset the
6 increased costs by raising the price of their products.
7 And the overall cost to come into compliance, by their
8 estimates, was approximately a million dollars.

9 The company states that it can't justify the
10 increase in production, packaging, and distribution costs
11 for product shipments amounting to less than ten percent
12 of their overall annual sales.

13 Okay. So with that said, I'd like to suggest
14 some criteria that I think should be considered.

15 CHAIRPERSON JONES: Now, you suggested -- really,
16 what you laid out the first time was Option 1.

17 MS. MARLOWE-LAWRENCE: Was what?

18 CHAIRPERSON JONES: It sort of sounded like
19 Option 1, that you were going through the list as I was
20 checking it off.

21 MS. MARLOWE-LAWRENCE: Gee, thanks.

22 CHAIRPERSON JONES: Did you have other things
23 that you needed to add to Option 1?

24 MS. MARLOWE-LAWRENCE: No, I just wanted to
25 finish up, I guess, before we -- do you want me to read

1 the options? I have a couple key issues I'd like for you
2 to consider before --

3 CHAIRPERSON JONES: Hit the key issues.

4 MS. MARLOWE-LAWRENCE: Thanks.

5 The five largest container manufacturers in the
6 country confirm for staff that they have minimum run
7 requirements ranging from 5,000 to 100,000 containers.
8 And companies requiring smaller runs are commonly referred
9 to container distributors, suppliers or the container
10 clearinghouses.

11 The same five largest container manufacturers in
12 the country confirm for staff that in order to include
13 post-consumer resin into plastic containers or to
14 lightweight containers, the molds used to create the
15 container must be modified.

16 The cost to modify molds runs \$25,000 to \$100,000
17 and up, depending on the size of the container and the
18 resin being specified.

19 The consumer requesting -- or the customer
20 requesting the modification normally pays the entire cost.
21 Although depending on how many clients of a particular
22 container manufacturer we might have gotten, you know,
23 there are some negotiations going on where their costs are
24 split between all of those companies needing to come into
25 compliance, and in one case five companies all with the

1 same container manufacturer. So they're splitting the
2 costs among everyone.

3 DEPUTY DIRECTOR WOHL: Michelle?

4 MS. MARLOWE-LAWRENCE: Yes.

5 DEPUTY DIRECTOR WOHL: I think they feel like
6 they're ready to have this for discussion.

7 MS. MARLOWE-LAWRENCE: Okay. That's fine.

8 CHAIRPERSON JONES: Are there any comments from
9 the members?

10 Good job, Michelle.

11 MS. MARLOWE-LAWRENCE: Thank you.

12 CHAIRPERSON JONES: Go ahead, Mr. Paparian.

13 COMMITTEE MEMBER PAPARIAN: Yeah, a couple
14 things.

15 I'd actually like to hear from our legal staff
16 about whether they believe it's possible for us to move in
17 this direction. Does the law as it relates to the food
18 and cosmetic containers then allow us to dive into some of
19 these other containers in the way that's being suggested?

20 MS. BORZELLERI: Deborah Borzelleri.

21 I don't think we're actually relying on that
22 section of the law other than to give us direction --
23 broad direction.

24 COMMITTEE MEMBER PAPARIAN: So if we're aware of
25 a company that's out of compliance, do we have the

1 authority to ignore that, you know, compliance issue based
2 on the size of the company or some other factor?

3 MS. BORZELLERI: Well, the Board has discretion
4 in who they take enforcement against, so -- does that --
5 that doesn't answer your question.

6 COMMITTEE MEMBER PAPARIAN: Yeah, I'm just
7 wondering -- you know, I can understand some of the issues
8 that are being brought forward today. But I want to make
9 sure before we even move down this path that we're on
10 sound legal footing and, you know --

11 MS. BORZELLERI: Yes, I think -- what we've
12 maintained throughout enforcement of this program is that
13 we have prosecutorial discretion. We can base a
14 determination here -- in fact, I'm sort of looking at this
15 process as more of a consolidated enforcement-type action,
16 you know, how to deal with these companies and similarly
17 situated companies rather than have to go do a public
18 hearing for each one. So we're looking at taking our
19 prosecutorial discretion in addition to the regulatory
20 aspect that says -- I think it's Section 17946.5, which
21 talks about we can use size of company in determining who
22 we're going to actually require certifications from.

23 So the Board can look at its prosecutorial
24 discretion, and we can also just backup a little bit and
25 say, you know, some of these companies, you know, with two

1 pounds of resin could possibly be one that we don't need
2 to get a certification on.

3 So the answer is, yes, I believe we're on sound
4 legal ground. I think we would be able to deal with this
5 in a regulatory fashion. But in this case because we're
6 in the state of taking enforcement action right now, I'm
7 not recommending regulations. But I think we can deal
8 with these on a case-by-case basis. Rather than have to
9 push them forward for a public hearing, we can look at the
10 various circumstances for each of these companies and see
11 which ones we don't want to take any further action on.

12 COMMITTEE MEMBER PAPARIAN: Okay, a couple of
13 other comments.

14 You mentioned the clearinghouses where a lot of
15 the smaller companies will purchase their containers from.
16 I wonder whether we should be working with these
17 clearinghouses to help them assure that they have
18 California compliant containers available for the people
19 who purchase from them.

20 MS. MARLOWE-LAWRENCE: This infrastructure that's
21 developed, they really sort of take last year's models
22 from various container manufacturers. And I would say
23 that, by and large -- I mean, it's a mixed match. I've
24 got, you know, 1,000 of those and 20,000 of these. And
25 there's not a lot of information available on their end

1 from the actual manufacturer about weight and resin type,
2 you know, unless they're a little savvy. But I would say,
3 by and large, the containers would be noncompliance,
4 because they'd be the heavier containers and --

5 COMMITTEE MEMBER PAPARIAN: Right. But I'm
6 wondering if there's something we can do to help them
7 develop a product line of California-compliant containers.

8 MR. ORR: Maybe I'll just interject something
9 here.

10 They don't -- most of these clearinghouses don't
11 actually make containers. They're basically obtaining
12 offspec containers, leftovers from other sources. And
13 ironically some of the containers that they're getting are
14 the noncompliance containers that other companies are
15 selling to them so that they can become compliant.

16 So whether or not they would be willing to
17 develop compliant containers is something worth pursuing.
18 But that's sort of not their business right now.

19 COMMITTEE MEMBER PAPARIAN: Yeah, but it seems
20 like -- I mean, somebody is getting compliant containers.
21 There's molds out there, you know, from which compliant
22 containers are coming. And, you know, if there was some
23 way to identify those compliant containers in a way that
24 would make it easier for someone selling 1,000 containers
25 to get them --

1 MR. ORR: I think that's definitely something
2 that the market development staff can do. Whether or not
3 that will assist the '97 to '99 certifications, I don't
4 know that it will. But I think it's definitely something
5 we could focus on for the future.

6 COMMITTEE MEMBER PAPARIAN: Right.

7 And one other suggestion for the future. One of
8 the things that was identified here was that attempts were
9 made to locate distributors or suppliers within a 500 mile
10 radius to supply compliant containers, et cetera. It
11 might be worth working with the RMDZ administrators to
12 identify this as a need, that in terms of working within
13 their RMDZs and some of the business development agencies
14 that are associated with the RMDZ areas, to suggest that,
15 you know, here's a -- I wouldn't call it a gaping hole,
16 but certainly a hole out there that needs to be filled
17 that would help to address a need and help California
18 companies and others in compliance with California law.

19 CHAIRPERSON JONES: Okay. Mr. Eaton?

20 No questions?

21 I just have a couple.

22 I mean I've got no problem with Option 1, going
23 down that road. But I do think that we've got to be real
24 careful, when we hear somebody say that it's going to cost
25 \$750,000 to change the mold --

1 MS. MARLOWE-LAWRENCE: Molds.

2 CHAIRPERSON JONES: Molds.

3 We're not talking a low run. We're talking a
4 huge run. When you look at packaging, it is a minuscule
5 part of a product. Okay. If they've got a million
6 dollars in those molds, they have a huge amount of money
7 in product.

8 That does not -- that argument doesn't get it for
9 me. It just doesn't. Okay, that would not be an exempt
10 condition for me.

11 But I think the other thing that we've got to do,
12 because clearly the clearinghouses aren't going to be able
13 to -- I mean, they're dealing with last year's model. If
14 we get -- you know, I think we ought to think also that
15 for, you know, every four or five small ones that come in
16 the door, that we make a determination that we're going
17 to -- that they just don't generate enough resin.

18 I think that means if we've set a target for 400
19 or 300 companies that need to be audited, I think if we
20 find that 50 or 60 are small and fall into that range that
21 you're talking about, be prepared to add 70 or 100 to that
22 original 400 to make it up. Because clearly if we start
23 exempting folks because of distributorship issues or those
24 types of things, we're going to start narrowing this
25 field. And the one association that I don't see here

1 today or that I don't see really too worried about this is
2 the American Plastics Council, who is selling the virgin
3 resin to all these companies.

4 So I think clearly if we have small ones that
5 fall within our mix, we don't need to burden them with
6 trying to figure out, you know, two pounds of resin. But
7 if there's ten of them, then add 20 more companies to the
8 list that you're going to audit.

9 Okay. You know what I'm saying? Don't just
10 start winnowing the list down. Start adding to the list
11 as the small ones come out. That would be my suggestion
12 along with Option Number 1.

13 All right. This group is looking for direction.

14 DEPUTY DIRECTOR WOHL: Yeah, our plan was to, you
15 know, get a feel for how you felt about this subject, and
16 then bring an item for the full board back that would have
17 some very specifics like, you know, what are the numbers
18 of the employees, what is the number -- you know, the
19 weight of the plastic, what -- so that you have some real
20 specifics to say yes or no to. But we wanted to at least
21 see if you were even interested in this concept.

22 CHAIRPERSON JONES: And I think based on the
23 parameters --

24 COMMITTEE MEMBER ROBERTI: I think it's important
25 to bring it back to the Board. I think it's an area

1 that's, you know, long overdue for us to have some
2 really -- some definitive understanding of the numbers and
3 the weight of plastics. So from my vote, yes.

4 CHAIRPERSON JONES: Under Option 1, to look at
5 that?

6 COMMITTEE MEMBER ROBERTI: Yes, Option 1.

7 CHAIRPERSON JONES: Okay. Anybody else?

8 Mr. Paparian.

9 COMMITTEE MEMBER PAPARIAN: Yeah, I'd like to --
10 that's fine. I'd like to have some further discussions
11 though about the issue of trying to develop a way to
12 determine California-compliant containers, make it easier
13 for some of the smaller companies to obtain them and make
14 it easier for us to determine compliance.

15 CHAIRPERSON JONES: Okay. And Mr. Eaton.

16 COMMITTEE MEMBER EATON: I just would follow-up
17 on Mr. Paparian's point, which I think is a pertinent
18 point, that -- are you asking us for guidelines for the
19 prosecutorial discretion, or are you asking us to exempt
20 or provide alternatives to the statute which are not
21 provided for in statute?

22 I think that's what Mr. Paparian was trying to --
23 what is the statutory authority by which we spring to get
24 this discretion? If it's guidelines for discretion, then
25 I don't know if you need Board action. You may need

1 guidance. But if you're looking at, you know, what is the
2 statutory authority by which you can implement Option 1 --
3 and I think that's the question Mr. Paparian had, because
4 you can't go on, you know, cosmetics. That's not --
5 that's already not part of the law. That may have been
6 what the Legislature or someone else had, you know,
7 intended.

8 So that's -- I think there needs to be when you
9 bring it back some sort of statutory analysis as to what
10 we can and cannot do. But if it's just prosecutorial
11 guidance, I'm not sure that that's really any real, you
12 know, issue that we, as a Board, have to look at in terms
13 of that. And I just -- is that what you're looking for?
14 Or are you looking for the other?

15 DEPUTY DIRECTOR WOHL: Well, the only comment I'd
16 make is that we have certifications in process. And so we
17 have small companies that fell into this. So we do have
18 to bring those forward to you in some fashion. We're
19 trying to decide how would you react to those and,
20 therefore, develop some guidelines so that, you know,
21 we're meeting your needs.

22 So in that sense, we do need your direction. But
23 it is -- it's not specific statutory authority that we're
24 looking for or guidance on that part of it. We're going
25 to bring these forward. And how you want to interact with

1 these small companies would then decide how we're going to
2 bring back further small companies.

3 Like Steve said, what group are we going to come
4 forward with next time, the next 75 we do or 100, and how
5 do you want us -- it just helps you kind of structure what
6 companies you want us to look at. And you do have that
7 discretion, to decide where do you want to focus your
8 intent, you know, what companies do you want to
9 scrutinize, where do you want to look for audits, those
10 kinds of things.

11 COMMITTEE MEMBER EATON: At least from my point,
12 you bring them as a category. And is there an inordinate
13 amount in this category versus the larger companies? And
14 if there are, then there's something wrong with our
15 process, that we're catching -- you know, it's like, you
16 know, maybe our net got too big a hole so the big fish get
17 through, but we only catch the minnows. Then that's a
18 different issue.

19 DEPUTY DIRECTOR WOHL: I think it's 52 out of
20 950.

21 COMMITTEE MEMBER EATON: All right. So roughly
22 five percent.

23 DEPUTY DIRECTOR WOHL: Yeah.

24 COMMITTEE MEMBER EATON: Pretty good, huh?
25 Pretty quick, huh?

1 DEPUTY DIRECTOR WOHL: Yeah, that's very good.

2 COMMITTEE MEMBER EATON: Yeah, all right.

3 DEPUTY DIRECTOR WOHL: So it's not significant,
4 but --

5 COMMITTEE MEMBER EATON: So that's the kind of
6 information I'd like to have, you know, is it five percent
7 of the total that we're looking at? There are very real
8 issues as to doing it. What we choose to do with them and
9 how we turn, you know, to provide for them I think is
10 something we have to look at.

11 DEPUTY DIRECTOR WOHL: Okay. We'll bring that
12 back and we'll discuss the other issues, too.

13 CHAIRPERSON JONES: Okay.

14 DEPUTY DIRECTOR WOHL: So we're moving on to
15 Agenda Item J and K, I believe.

16 CHAIRPERSON JONES: Yes.

17 DEPUTY DIRECTOR WOHL: So Agenda Item J is the
18 scope of working, K is the award.

19 CHAIRPERSON JONES: We'll do these two items and
20 then we're going to take a break.

21 DEPUTY DIRECTOR WOHL: Okay. John promises to be
22 brief.

23 Consideration of scope of work for risk
24 assessment of vinyl chloride in buildings and building
25 materials.

1 And John Blue will present.

2 MR. BLUE: Good afternoon, Chairman Jones,
3 Committee Members. I'm John Blue of the Board's
4 Sustainable Building Program.

5 And I've got Items J and K, which are 81 and 82
6 of the Board agenda packet.

7 Item J, or 81, is the consideration of a scope of
8 work for the risk assessment of vinyl chloride in
9 buildings and building materials.

10 This contract concept came about because vinyl is
11 everywhere in the modern building. We've got flooring,
12 wall coverings, furnishings, molding products; all of
13 these often contain vinyl, usually in the form of PVC.

14 We often run into situations where we're talking
15 to different manufacturers of building materials and
16 they're making conflicting claims and counterclaims about
17 which product is more green or more sustainable. The
18 common claim is we -- or the common situation is where we
19 have two similar products and one may have a higher
20 recycle content, whereas the other may be vinyl free. And
21 the manufacturer of the product with the lower recycle
22 content may claim that theirs is actually preferable
23 because it is a vinyl-free product.

24 At this time, staff doesn't really have a
25 mechanism to analyze these claims, so that's what this

1 contract is to do.

2 The results of this interagency agreement would
3 help staff to analyze claims regarding building products
4 and advise the Board regarding the use of vinyl and
5 sustainable building.

6 So staff's recommendation is for the Board to
7 approve Resolution 2002-352 approving a scope of work to
8 conduct risk assessment of vinyl chloride in buildings and
9 building products.

10 CHAIRPERSON JONES: Any questions of the members?

11 Mr. Paparian.

12 COMMITTEE MEMBER PAPARIAN: Mr. Chairman, I'll
13 move Resolution 2002-352.

14 COMMITTEE MEMBER EATON: Second.

15 CHAIRPERSON JONES: I've got a motion by Mr.
16 Paparian and a second by Mr. Eaton.

17 Peggy, could you call the roll.

18 SECRETARY FARRELL: Eaton?

19 COMMITTEE MEMBER EATON: Aye.

20 SECRETARY FARRELL: Paparian?

21 COMMITTEE MEMBER PAPARIAN: Aye.

22 SECRETARY FARRELL: Roberti?

23 COMMITTEE MEMBER ROBERTI: Aye.

24 SECRETARY FARRELL: Jones?

25 CHAIRPERSON JONES: Aye.

1 Is it the wish of the Committee to put this on
2 consent?

3 COMMITTEE MEMBER PAPARIAN: Yes.

4 COMMITTEE MEMBER EATON: Yes.

5 CHAIRPERSON JONES: Okay. Put it on consent.

6 Eighty-two.

7 MR. BLUE: Okay. Item 82 is now the
8 consideration of award of the contract -- or of an
9 interagency agreement with the Office of Environmental
10 Health Hazard Assessment. As the CalEPA agency with the
11 expertise in conducting a risk assessment, staff is
12 recommending OEHHA as contractor for this project.

13 Staff has been in contact with the staff of
14 OEHHA's Integrated Risk Assessment Section in development
15 of the contract concept and the scope of work.

16 The contract amount approved by the -- well,
17 approved by the Board in considering the contract concept
18 was \$38,655.

19 Staff recommends that the Board adopt or approve
20 Resolution 2002-353 approving the Office of Environmental
21 Health Hazard Assessment as contractor to conduct a risk
22 assessment of vinyl chloride.

23 CHAIRPERSON JONES: Mr. Paparian.

24 COMMITTEE MEMBER PAPARIAN: I'll move adoption of
25 Resolution 2002-353.

1 CHAIRPERSON JONES: Okay. And a second?

2 COMMITTEE MEMBER EATON: Second.

3 CHAIRPERSON JONES: Okay. We've got a motion by
4 Mr. Paparian and a second by Mr. Eaton.

5 Would you please call the roll, Peggy.

6 SECRETARY FARRELL: Eaton?

7 COMMITTEE MEMBER EATON: Aye.

8 SECRETARY FARRELL: Paparian?

9 COMMITTEE MEMBER PAPARIAN: Aye.

10 SECRETARY FARRELL: Roberti?

11 COMMITTEE MEMBER ROBERTI: Aye.

12 SECRETARY FARRELL: Jones?

13 CHAIRPERSON JONES: Aye.

14 And we'll put that on Committee consensus --
15 concurrence consensus or whatever.

16 All right?

17 DEPUTY DIRECTOR WOHL: Do you want to try and get
18 our last two in or --

19 CHAIRPERSON JONES: Are you okay with that, get
20 the last two?

21 85 and 86, what's the deal with those?

22 DEPUTY DIRECTOR WOHL: We can only hear them --
23 we're talking N and O. We can only hear them at the full
24 Board because we had a change in the title that didn't get
25 in time for ten days for the Committee, so we'll have to

1 just do those at the full Board.

2 COMMITTEE MEMBER EATON: And do you have a
3 contractor?

4 DEPUTY DIRECTOR WOHL: I believe we do.

5 COMMITTEE MEMBER EATON: In my item I have no
6 contractor. I mean, what I ask Legal for is an opinion as
7 to how this Committee and/or a board can vote to award a
8 contractor when there's no contractor present. Now, I
9 can't just -- I can't vote for awarding a contract to a
10 list that then will be selected from. That just doesn't
11 seem to be legally acceptable or allowable.

12 CHAIRPERSON JONES: Between now and the Board
13 meeting can you get some answers to --

14 DEPUTY DIRECTOR WOHL: Yeah, that was our plan,
15 is to have the specific contractor prior to the Board
16 meeting.

17 COMMITTEE MEMBER EATON: Well, we're within the
18 ten days. The next Board meeting is seven. Seven days
19 and you've got a ten-day notice.

20 DEPUTY DIRECTOR WOHL: Well, not -- the title is
21 okay. We can get you that contract. We've done that
22 before where we're still reviewing bids and we might get
23 them in to you like the week before.

24 COMMITTEE MEMBER EATON: It is the week before.

25 DEPUTY DIRECTOR WOHL: It'll be really soon.

1 (Laughter.)

2 CHAIRPERSON JONES: All right. Item 83.

3 That's a good point.

4 DEPUTY DIRECTOR WOHL: So Agenda Item L and M,
5 consideration of revised scope of work for the Revised
6 Native American Intergovernmental Greening Project.

7 And Jerry Hart will present.

8 MR. HART: What we're trying to do here is -- we
9 have a revised scope of work for this Native American
10 greening contract. We've modified the scope to
11 incorporate some feedback we got from quite a few of the
12 bidders and consultants and outside folks that provided us
13 comment. We went out to bid twice, were unsuccessful both
14 times. So we modified the scope to focus our attention on
15 the development of a resources kit and we eliminated these
16 series of workshops, which in most people's opinion would
17 extend beyond the dollar amount of the scope.

18 So we've revised the scope. We have a revised
19 scope in front of you requesting approval of that. And
20 then, of course, the next item would be the consideration
21 of award to an interagency agreement.

22 So the revised scope for the Native American
23 Intergovernmental Greening Project, Fiscal Year 2000/2001
24 funds, Contract Concept Number 666, requests approval of
25 Option 1.

1 CHAIRPERSON JONES: Okay. Questions?

2 Mr. Eaton.

3 COMMITTEE MEMBER EATON: Mr. Hart, what's
4 different about this scope than the previous scope? And I
5 have it here. And the only thing I'm able to tell the
6 difference is that you've not included composting or waste
7 reduction practices. And yet we've increased the dollar
8 amount, is that correct, in the contract? Or we reduced
9 it?

10 MR. HART: No, it was left the same. We
11 requested additional funds that were --

12 COMMITTEE MEMBER EATON: But the scope is
13 exactly, almost word for word.

14 MR. HART: No, we eliminated a whole section
15 of -- a series of workshops that the contractor was to do.
16 There were four, I believe. And the --

17 COMMITTEE MEMBER EATON: So you've changed it to
18 a conference. So that's -- so the differences are you
19 substituted workshops and now you're going to do a
20 conference instead of a workshop?

21 MR. HART: No, we deleted the workshops
22 altogether. The contractor was to put together a series
23 of workshops and bring in attendance. The conference
24 thing is nothing but a -- we were requesting the
25 contractor attend a U.S. EPA conference with us that we

1 learned of last year and staff attended. We thought it
2 was very beneficial and we could probably attend the
3 conference and gain some exposure to the resource
4 materials kit that the contractor is putting together
5 through this contract.

6 So, I mean, it's a significantly different
7 contract because we're not requiring the series of
8 workshops. And really --

9 COMMITTEE MEMBER EATON: But we're going to
10 require him to go to a conference.

11 So in other words the scope is being reduced, is
12 what you're saying?

13 MR. HART: Well, the scope is significantly
14 reduced, yeah.

15 COMMITTEE MEMBER EATON: Right. But the money is
16 the same. So you're going to require no workshops, but
17 just to go to a conference?

18 MR. HART: Well, the --

19 COMMITTEE MEMBER EATON: I mean I've got the
20 scope of work here and I've gone through it and the boiler
21 plate language is all the same. The only thing that's
22 different is the composting and the waste reduction. So
23 what other differences are there in the contract that
24 relates to how it's been revised. I understand that
25 there's now a conference that the contractor is going to

1 be required to attend, and not do workshops.

2 MR. HART: Right.

3 COMMITTEE MEMBER EATON: Okay. So we're
4 relieving some of the burden on the contractor?

5 MR. HART: That's right, a lot of the burden. I
6 mean the work -- the creation of the workshops and
7 advertising and getting attendance and setting up there --
8 again, there were four in workshops we were required to be
9 in northern and southern California. You know, that was a
10 heck of a lot of work. So we focused our attention on the
11 development of the resource kit, you know, the product,
12 and eliminated the selling of the product, if you will,
13 through the workshops.

14 COMMITTEE MEMBER EATON: Okay. Then let me ask
15 you this: Why are we only asking the contractor or to go
16 after projects of \$250,000 or more in listing of the items
17 in certain tasks, Task 3 and Task 5? It would seem to me
18 that if we're looking at a materials kit that's going to
19 help a certain sector of our economy, our State, that we
20 would want to look at, you know, those projects wherein
21 there's remodeling or there's building of housing. The
22 only projects that would be \$250,000 or greater are large
23 halls, perhaps a certain kind of business. It would seem
24 to me that we would want to have a materials kit that
25 showed them how they could do simple things for less money

1 so that the projects -- are you saying that we can only do
2 green building when there's projects of \$250,000 or
3 greater?

4 MR. HART: No, no --

5 COMMITTEE MEMBER EATON: I mean, I find that hard
6 to believe, knowing you. But yet that's what we're asking
7 them here. And yet, you know, that we -- I would want a
8 list, I would think, or a list of all projects.

9 MR. ORR: Mr. Eaton, I think the purpose of that
10 is that their resource kit would be useful for all
11 projects. Basically, what we've asked for in terms of a
12 list is that we would be aware of specific projects that
13 are going on in different tribes. And it's our feeling
14 that we don't want to hear about individual remodeling
15 projects or single-unit projects; that we would want to
16 know about multiple-unit projects and other kinds of
17 commercial projects. And it's mostly just from a
18 bookkeeping standpoint that we want to only know about
19 larger projects. But we believe the materials would be
20 useful for other projects of all sizes.

21 COMMITTEE MEMBER EATON: But I would think that
22 that goes against our very nature; we'd want to know all
23 kinds of projects, because sometimes the smaller projects
24 are easier to work with and to obtain the goals that are
25 necessary. For instance, putting a little piece of

1 styrofoam next to the bathtub would provide insulation;
2 therefore, keep the temperature of the tub at a
3 temperature more constant.

4 And that you wouldn't get with a project that was
5 under 250,000. But yet if you had included that list of
6 projects, material resources kit should cover all items,
7 not just ones that are greater or being large.

8 DEPUTY DIRECTOR WOHL: Right. I think that's
9 what Bill is saying. The kit is going to cover any type
10 of project. We just thought -- and it was partially my
11 discussion with them -- we could not get a contractor to
12 give us a list of every project they were working on at
13 these indian reservations. It is huge numbers. We're
14 talking about billions and billions of dollars if we're
15 talking about every residential change, everything that's
16 going on. So we wanted to say, okay, if we're going to
17 have some green building focus later, let's talk about --
18 let's find out what are some big picture projects. And
19 even 250 is a pretty large number when you talk about, you
20 know, even homes in some places.

21 So we're really just looking at some big projects
22 that are coming down the road so that we can get in at the
23 ground level. And we wanted to see kind of this whole
24 list of them that is out there just to try and narrow the
25 scope a little bit. But this package that we're putting

1 together, the kit, can work for anything. And we're going
2 to cover all kinds of recycled materials and all kinds of
3 products that are out there.

4 COMMITTEE MEMBER EATON: So can I take it then
5 that this kit that the -- on page 83-6 of my agenda item,
6 that the contractor shall provide a maximum of 100 copies,
7 that we're not going to get a very great distribution? So
8 as the underlying rationale for only providing them, is
9 that a typo, should that be a minimum, or is that a
10 maximum that you're doing for paper reduction?

11 DEPUTY DIRECTOR WOHL: Well, I think partly
12 that --

13 COMMITTEE MEMBER EATON: Just which is it?

14 DEPUTY DIRECTOR WOHL: Well, probably a
15 combination of that. We wanted to have some hands-on
16 product. But you typically do not ask them to print up
17 hundreds of thousands of copies of something. And we
18 would have pieces of this on-line and able to distribute.
19 But there would be some attempt to, on the individual
20 projects, give them a hard copy of a package and say,
21 "Here's what we want you to look at. Here's some things
22 that we think will work just for you." But then we would
23 do a lot of customization, and we wouldn't want to have,
24 you know, thousands of packets that only meet certain
25 needs for certain people.

1 So our plan is that we would put together packets
2 later for individual projects, or whatever. But we
3 couldn't really get this contracted to do all the printing
4 of that product, too. We didn't think it was within the
5 \$70,000 scope.

6 BOARD MEMBER EATON: All right. That's all the
7 other questions I have. But I think at the moment right
8 now that this scope of work is not any real different than
9 the previous scope of work other than the fact that
10 you're -- if the intent was to try and get individuals to
11 utilize green building by having the contractor go to a
12 conference and get the material and then distribute kits
13 thereafter, doesn't seem to be, you know, much difference
14 in the original scope of work as it relates to this
15 particular project. I thought we were going to revise it
16 substantially.

17 CHAIRPERSON JONES: Do any of the other members
18 have questions?

19 I've got a couple questions.

20 One thing that kind of concerns me is -- I don't
21 know if Jerry said it or who said it. But we're going to
22 develop the kit and rather than spend time selling the
23 idea, you know, we're going to have the kit available.

24 In your honest opinion, what do you do most of
25 the time? Don't you sell what it is we do? I know I do.

1 MR. HART: And I think that's probably --

2 CHAIRPERSON JONES: -- a flaw?

3 MR. HART: No, no. That's the genius of the
4 revised scope of work.

5 (Laughter.)

6 CHAIRPERSON JONES: I was wrong.

7 Okay, Jerry.

8 MR. HART: I think it's going to be --

9 CHAIRPERSON JONES: -- genius here.

10 BOARD MEMBER EATON: He's Spiderman. Let's go.

11 MR. HART: I think it's going to be mostly up to
12 ourselves, our section and other Board programs to do the
13 selling, as opposed to the contractor. That's the main
14 difference is -- in terms of the amount work and the cost
15 and where the dollars were going, the scope is
16 significantly revised because of the lack of those
17 workshops. And rather than the primary effort of selling
18 the kit through those workshops, that's going to, you
19 know, be our job after the contract.

20 We were told by a number of people in a number of
21 related areas of the field that we were simply asking too
22 much for the amount of money we had. So what we wanted to
23 get our hands on was that tool kit. And then it will be
24 incumbent upon us to do the selling and do the
25 distribution.

1 CHAIRPERSON JONES? Genius.

2 (Laughter.)

3 DEPUTY DIRECTOR WOHL: I mean the other thing
4 that was discussed at the reallocation meeting was that
5 this was all the money available for this, but that
6 potentially we could come back for the second piece. And
7 that's kind of how it was split up in that we decided,
8 "Okay." And that's the genius part. But that we could
9 really have the product and we'd have the actual tangible
10 piece for this part of the contract and then we could
11 debate the other stuff. If there were dollars, we could
12 talk about the outreach the more we found out about it.
13 Or if not, we could do it ourselves.

14 CHAIRPERSON JONES: Okay. What's the will of the
15 Committee? Do we want to just bring this forward to the
16 Board meeting or what?

17 COMMITTEE MEMBER ROBERTI: I think we should just
18 bring it to the Board.

19 CHAIRPERSON JONES: All right. Why don't you
20 just bring this item and 84 to the meeting for further
21 discussion, because I'm still trying to find --

22 COMMITTEE MEMBER EATON: Along with yourself and
23 your genius.

24 (Laughter.)

25 CHAIRPERSON JONES: I do appreciate you, Jerry.

1 But I've got to tell you, I mean this is a tough -- this
2 is going to be a tough one to get this information into
3 that culture in some -- and if we don't have -- if we
4 don't have a plan identified on how we're going to do
5 that, then why spend the 70 grand. That's my -- that's
6 what I'm trying to figure out.

7 MR. HART: Sure.

8 CHAIRPERSON JONES: All right. So bring them
9 both to the full Board.

10 We are going to -- the other two will come to the
11 Board, and you will get a -- I mean, one of three off of a
12 list at some later date, don't make it for me.

13 DEPUTY DIRECTOR WOHL: Right. We're going to
14 give you a profile on who we're picking.

15 CHAIRPERSON JONES: Okay. And a name, okay?

16 DEPUTY DIRECTOR WOHL: Yes.

17 CHAIRPERSON JONES: We're going to go to break
18 for 15 minutes?

19 We'll be back at a quarter to four.

20 (Thereupon a brief recess was taken.)

21 CHAIRPERSON JONES: Okay. We're going to
22 reconvene. And I would ask that our friends from Special
23 Waste keep things moving.

24 And we will start -- I'll ask if any members have
25 ex partes.

1 Mr. Eaton?

2 COMMITTEE MEMBER EATON: Just a quick hello to
3 George Larson and the benefits of New Age Plastic.

4 CHAIRPERSON JONES: Mr. Paparian?

5 COMMITTEE MEMBER PAPARIAN: I'm sorry I didn't
6 benefit from that discussion.

7 Barry Takallou regarding the various tire items
8 on the agenda today; and also a meet and greet with Don
9 Gamblen.

10 CHAIRPERSON JONES: And I also spoke with Mr.
11 Larson.

12 Okay. Martha.

13 MS. YEE: I'm sorry. We're moving along real
14 fast.

15 Good afternoon, Chairperson Jones, Committee
16 Members of the Special Waste and Waste Prevention and
17 Market Development Committee. I'm Kristin Yee, Supervisor
18 at the Used Oil Recycle Analysis Unit. I'm here and on
19 behalf of Shirley Willd-Wagner for the Special Waste
20 Deputy Director's report for used oil, and will present
21 one agenda item.

22 In terms of the Deputy Director's report, just
23 three weeks ago we had the Statewide Household Hazardous
24 Waste Used Oil Conference down in -- attended by 275
25 participants from local jurisdictions, nonprofits, and

1 specialists in the used oil field.

2 We also appreciate the presence and attendance of
3 three of our Board Members involved in it -- Board Member
4 Roberti; Chairperson Moulton-Patterson, who presented
5 the awards at the Board's meeting dinner; and Board Member
6 Medina, who gave a presentation on the Board's 2001
7 strategic plan. He also showed a videotape exploring harm
8 of the high-tech trash in Asia. And that was a real eye
9 opener for many of the attendees there.

10 As the keynote speaker, we also had a Carolyn
11 Reifenspeiker, who spoke on precautionary principle. She
12 also spoke here at EPA several months ago with DTS who
13 sponsored the session.

14 With regards to our Used Oil HHW Grant Cycle, we
15 did bring forward Block Grant Cycle 8 for award in July
16 2002 and also HHW award in August 2002.

17 So that's it for the report. Are there any
18 questions? Otherwise, I'll go on to the agenda item?

19 CHAIRPERSON JONES: Go ahead.

20 MS. YEE: Okay. I'm going to present Agenda Item
21 W, which is Board Item 61. What we would like is your
22 consideration of the California State University,
23 Sacramento, as a contractor for the 2002 Used Oil
24 Recycling Forum.

25 This is a statewide conference of Used Oil

1 Program stakeholders that's held annually since 1999. The
2 conference is a two-day event and it's an effort to
3 support local jurisdictions and the nonprofit grant
4 managers, Used Oil HHW Program.

5 We last had our Used Oil Program here in northern
6 California in January. So we plan to rotate it, and the
7 next one will be in southern California either in November
8 or January.

9 And then attached to the agenda item, the scope
10 of work, which outlined the work that must be done by the
11 hired contractor. And the contract is for \$90,000 to take
12 place in, as I said, earlier November or January.

13 So staff recommends the approval of California
14 State University, Sacramento, as contractor for the 2002
15 Use Oil Recycling Forum by adopting Resolution Number
16 2002-291.

17 CHAIRPERSON JONES: Thank you. Any questions
18 from members?

19 Do I hear a motion?

20 COMMITTEE MEMBER EATON: I'll move to adopt
21 Resolution 2002-291 as it relates to the consideration of
22 California State University, Sacramento, as contractor for
23 the 2002 Used Oil Recycling Forum.

24 COMMITTEE MEMBER PAPARIAN: Second.

25 CHAIRPERSON JONES: We have a motion by Mr.

1 Eaton, a second by Mr. Paparian.

2 Peggy, could you call the roll.

3 SECRETARY FARRELL: Eaton?

4 COMMITTEE MEMBER EATON: Aye.

5 SECRETARY FARRELL: Paparian?

6 COMMITTEE MEMBER PAPARIAN: Aye.

7 SECRETARY FARRELL: Roberti?

8 Jones?

9 CHAIRPERSON JONES: Aye.

10 If it meets with the members' approval, we'll put
11 this on Committee concurrence consensus under fiscal
12 issue.

13 Okay. That will be under --

14 MS. YEE: Thank you.

15 CHAIRPERSON JONES: Thank you.

16 Now, Martha, we have -- I'm going to allow you to
17 decide if you want to take that one item that you had
18 talked to me about which fits in development.

19 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

20 Yeah. Martha Gildart with the Special Waste
21 Division.

22 The proposal right now, Item X, which is Board
23 Item 62, is discussion of draft report and analysis of
24 subsidies and other options to further California tire
25 recycling markets.

1 In light of the lateness in the hour, staff would
2 like to offer the Committee the option of putting this
3 item off and holding a special committee workshop early in
4 July to get into the nitty gritty of this issue. I'm
5 afraid if we were to discuss it at any length this time of
6 day, we'd be getting out of here at seven or eight o'clock
7 at night.

8 I have talked to representatives of the tire
9 industry who are here today. And they are supportive of
10 that idea of putting it off for further discussion or more
11 detailed discussion than they might be able to do today.

12 CHAIRPERSON JONES: Okay. Members?

13 COMMITTEE MEMBER EATON: May I ask a question?

14 CHAIRPERSON JONES: Sure.

15 COMMITTEE MEMBER EATON: Part of this would
16 relate as well to a number of the interested parties and
17 other parts other than northern California; is that
18 correct? A lot of the main crum individuals and --

19 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
20 Correct.

21 COMMITTEE MEMBER EATON: So one of the things
22 that we're trying to set up may be the consideration of
23 having it in another location that might be geographically
24 convenient to some of those that give their participation.
25 I'm just saying, that's not direction. That's just

1 something to consider as well. I'm not sure where we are,
2 but --

3 COMMITTEE MEMBER PAPARIAN: That's fine. I just
4 had another question.

5 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
6 So that would be the Committee's wish?

7 CHAIRPERSON JONES: Yeah, I'd have no problem. I
8 mean most of these people come out of southern California.
9 So we ought to be able to hold the Committee workshop --
10 that Committee workshop will be one item, which will be
11 this item. Okay?

12 And we'll hold it in -- can we shoot for July?

13 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
14 Yes, early July preferably. We'll have to look at what
15 kind of meeting rooms are available and set it up. But,
16 you know, we'd hope -- probably, you know, sometime after
17 the 4th of July before the Committee meets.

18 EXECUTIVE DIRECTOR LEARY: Mark Leary, Waste
19 Board. I just want to take two seconds to talk about
20 that, because the July calendar is a little unusual. We
21 have Committee meetings, then we have a week off for CRRA,
22 and then we come back for a Board meeting. Would it be
23 this Committee's pleasure to have that special workshop
24 late in that committee week or --

25 COMMITTEE MEMBER EATON: Is CRRA in southern

1 California?

2 COMMITTEE MEMBER PAPARIAN: Oakland.

3 EXECUTIVE DIRECTOR LEARY: So it is a little bit
4 complicated, unless we want to do it Thursday-Friday,
5 either on committee week or the CRRA -- I don't know what
6 parts of the week CRRA meets. Is that all week or --

7 CHAIRPERSON JONES: It's usually Sunday, Monday,
8 Tuesday, and Wednesday, I think.

9 COMMITTEE MEMBER PAPARIAN: I think we're on
10 Wednesday morning.

11 CHAIRPERSON JONES: I am?

12 COMMITTEE MEMBER PAPARIAN: CRRA.

13 EXECUTIVE DIRECTOR LEARY: We'll come back to
14 that Committee. I just throw that out for something to
15 factor into our thinking. But I appreciate the
16 Committee's willingness to go on the road. That will be
17 the first for a committee, and I think that's something
18 maybe the other committees will entertain.

19 CHAIRPERSON JONES: Mr. Paparian.

20 MR. EATON: And I'd have to admit, I did not
21 consult with our real genius.

22 CHAIRPERSON JONES: There are two people that
23 have submitted speaker slips, and I'm going to allow them
24 to speak because they came -- both of them came from
25 southern California.

1 But go ahead, Mr. Paparian.

2 COMMITTEE MEMBER PAPARIAN: Yeah. Following this
3 item last time, Mr. Leary and Ms. Gildart and I had a
4 meeting about the report, where I brought up some of my
5 concerns. And they agreed it would be addressed in the
6 version of the report that we -- actually, I don't have
7 the version that's before us. So I'm hoping we can get
8 that. But just to let everybody know what we agreed to
9 was that all references in the report suggesting that
10 using tires as fuel as recycling would be changed.
11 Instead of using the term "recycling," a more neutral term
12 would be used.

13 Presumably that's been done in the report
14 throughout. But I haven't seen a copy of the report yet.
15 I'm hoping that we had a copy of the report well in
16 advance.

17 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
18 A copy of the report that was distributed in April is also
19 available on the web site for the California State
20 University, Sacramento. And it was listed in the agenda
21 item. Professor Wassmer has incorporated those changes
22 into that.

23 There were some further changes and corrections
24 that staff had that he has incorporated. And we were
25 anticipating possible changes out of this Committee

1 meeting. I had some handouts prepared that were at the
2 heart of the matter that showed a couple little
3 corrections. And that any further comments from this
4 Committee were going to be folded into that next document
5 before actually printing more copies. We were just trying
6 to do sort of a paper saving effort.

7 If you would like, we can supply you with a copy
8 as it stands now, sort of an intermediate draft.

9 COMMITTEE MEMBER PAPARIAN: Since I have such
10 strong concerns about this one particular issue and not
11 having the report delve into the legal issue of whether
12 recycling incorporates incineration or not. But I would
13 like to see that, with enough, you know, advanced time so
14 that I can just, you know, confirm that the report is
15 consistent with our understanding, and then there won't be
16 any further issues on that issue.

17 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
18 No problem.

19 The handout -- those were -- the issues we were
20 going to be discussing today, and those were the
21 alternatives, the criteria by which the alternatives were
22 evaluated, the weighting factors for the criteria, and
23 then the ratings overall which yield the final score. And
24 we wanted to get some discussion on the definitions and
25 the considerations used in each of those. And we felt

1 that there wouldn't really be time today, but those are
2 the most recent versions in the handout.

3 CHAIRPERSON JONES: Okay. I'm going to call up
4 the two speakers that came out for today.

5 Mark Korte.

6 COMMITTEE MEMBER PAPARIAN: If there's a copy --
7 I think Mr. Eaton suggested that he would like a copy,
8 too. I think if I could get --

9 COMMITTEE MEMBER EATON: Copies to the Board
10 offices at, you know, the next couple of days or something
11 like that or whenever.

12 COMMITTEE MEMBER PAPARIAN: That may be enough
13 time to read it and absorb it, and so forth, before the
14 Committee meeting.

15 MR. KORTE: Thank you, Chairman Jones. Mark
16 Korte with Tri-C Tire Recycling in northern California.
17 I'll defer my comments till the meeting in southern
18 California.

19 CHAIRPERSON JONES: Okay. I just wanted to give
20 you the opportunity.

21 MR. KORTE: Thank you.

22 CHAIRPERSON JONES: Mr. Winters, who is retiring
23 after a very long and distinguished career in the tire
24 business.

25 MR. WINTERS: Thank you, Mr. Jones, Board

1 Members.

2 I also will defer most of my comments, with the
3 one exception, until the July workshop that's to be
4 scheduled.

5 My primary mission today relative to the issue of
6 subsidies is to let it be known that we are in favor of
7 them, primarily because it will level the playing field of
8 Canadian imports. We need that badly.

9 Trying to do it through legislation has not been
10 very fruitful. Trying to do it through influence at
11 CalTrans, which is only one consumer of crum rubber, has
12 not been very fruitful. And I think a comparable subsidy
13 to the Canadian practices or their individual provincial
14 practices is appropriate.

15 Secondly, but also very close to home, our
16 company recycles primarily tire buffings and tire tread
17 peelings from scrap tires; and there's nothing in the
18 language of the current draft report from the Sacramento
19 State University Subsidies Report that addresses the issue
20 of spreading that proposed subsidy to cover tire buffings
21 and tire peelings, which are historically as important as
22 the whole tire itself.

23 And the retreaders would give that a big amen.

24 In any case, thank you for hearing me. We'll see
25 you in July.

1 CHAIRPERSON JONES: All right, Bob. Thank you.
2 Any questions, Members?

3 All right. We have the direction. We're going
4 to do a workshop in southern California.

5 I do have a question though for the folks from
6 southern California. We probably have the ability to use
7 Long Beach as well as the South Coast Air District. Long
8 Beach I don't think we've used, and we're renting -- we're
9 renting space there. Long Beach isn't that tough to get
10 to from any of your locations?

11 MR. WINTERS: Fine.

12 CHAIRPERSON JONES: Fine.

13 Martha, we may want to talk and see if they've
14 got a nice meeting room there that would easily
15 accommodate and we're already paying rent. So what the
16 heck, you know. We ought to look at it.

17 All right, Martha, why don't you give -- and
18 thank you, Professor, for coming in. I hope this will
19 work for you. But it does take -- it needs a lot of time
20 to discuss this.

21 Thanks for participating.

22 Could you give us a little -- I mean tell us what
23 we're going to do. Are we going to Item 56, Q, and then
24 going through the agenda, is that your --

25 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

1 Yes. Item Q will probably take some discussion. R and S
2 will be fairly brief. I can tell you what's been
3 happening there. You don't have an item to act on today.

4 Item T, we can give you a very brief background.
5 Once again, we don't have a selection yet to act on, but
6 we can give you a brief background there.

7 The reallocation item may take some time, as will
8 the discussion of the California District Attorneys
9 Association Grant.

10 We've skipped the subsidies.

11 And then the last one is the research center
12 feasibility study. So --

13 CHAIRPERSON JONES: All right. Let me just ask
14 you a question.

15 On Item 60, U, this is the reallocation, but it
16 did not get on the Budget's calendar the last --

17 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
18 There was an administerial slip up, and I --

19 CHAIRPERSON JONES: Understood. I'm not blaming
20 anybody. It's fine.

21 This committee actually deferred this over to a
22 board meeting. And then we were able to see a completed
23 version out of budgets, which kind of surprised a couple
24 of ours members.

25 When we get to that item, you know, I wouldn't

1 mind deferring it again. Since it's not on their agenda,
2 I know that we, in fact, will all get to take a shot at
3 this at one time. So why don't -- I mean, Members, on 60,
4 it's not budgets, is that -- Mr. Eaton?

5 COMMITTEE MEMBER EATON: So what does that mean,
6 it's not going to be heard next week or --

7 CHAIRPERSON JONES: It will be heard at the Board
8 meeting. Do we want to hear it -- this is the one that
9 you had -- this is a reallocation that we can hear. But
10 it wasn't on Budgets and it should have been. So really
11 probably it should go to the full Board to hash out,
12 unless we want to take a first shot at it and put it with
13 a recommendation. I'd prefer to see it just go directly
14 to the Board meeting.

15 COMMITTEE MEMBER EATON: That's fine.

16 CHAIRPERSON JONES: So 60 will go directly to the
17 Board meeting.

18 Okay. So go ahead, Martha. Now, at least we've
19 sort of got it understood.

20 COMMITTEE MEMBER EATON: So if I can make a
21 suggestion, Mr. Jones.

22 CHAIRPERSON JONES: Yes, sir.

23 I think -- I'm not going to speak, but I think
24 items Y and Z, 63 and 64, can be handled fairly quickly.
25 I don't think -- I don't have a problem with those.

1 COMMITTEE MEMBER EATON: Then that would leave
2 really -- since S, T and U are very quick, because you
3 don't have any contractor, right? That's just a comment
4 or two as to what the status is; is that correct, Ms.
5 Gildart?

6 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
7 R, S and T, correct.

8 COMMITTEE MEMBER EATON: R, S and T.

9 That would really then just leave Q and probably
10 V. And V is a work-in-progress. So we'll probably have
11 an update on that.

12 So I would suggest if we could move judiciously
13 and take Y and Z and then have her go through R, S, T, and
14 then we can kind of see which of the remaining two we
15 wanted to take up first, which would be either Q or V.
16 And my suggestion would be is we probably could handle V
17 fairly quickly, and that would leave Q as the last
18 remaining item for today.

19 CHAIRPERSON JONES: Okay. You've got me totally
20 confused.

21 (Laughter.)

22 CHAIRPERSON JONES: I've got Peggy in one hand --

23 COMMITTEE MEMBER EATON: Oh, that's the real
24 genius.

25 CHAIRPERSON JONES: Hey, at least I'm honest to

1 say that I'm confused, you know.

2 All right. You want to do Y and Z first?

3 COMMITTEE MEMBER EATON: That would move quickly.

4 CHAIRPERSON JONES: Go ahead. Do Y and Z,
5 Martha.

6 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

7 Okay. I'll try and combine the two of them if you really
8 want to move quickly.

9 CHAIRPERSON JONES: Sure.

10 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

11 Items 63 and 64 from the Board Agenda, Y and Z on this
12 agenda, deal with the establishment of a research center
13 at one of the university campuses to look into tires.

14 The scope of work would establish a
15 cross-disciplinary tire research center at a California
16 academic institution. And it is proposed to use the
17 Office of Environmental Health Hazard Assessment to do the
18 feasibility study and come back to the Board and tell us
19 what should be involved in setting up a cross-disciplinary
20 California tire research center, which university campuses
21 would be the best fit and what sort of, I guess, funding
22 level would be required to manage such a center.

23 This is a proposal that came from Board Member
24 Paparian's office. And we could answer any questions that
25 you have at this time, or do you --

1 CHAIRPERSON JONES: I have a couple of questions.
2 I know you're going to move it.

3 COMMITTEE MEMBER PAPARIAN: I have a couple of
4 questions anyway.

5 CHAIRPERSON JONES: Okay. Go ahead with your --

6 COMMITTEE MEMBER PAPARIAN: Well, just -- in
7 looking at the scope of work, I just have one suggestion.
8 The Task 1 is: Research institutional and individual
9 expertise. Given the academic years and the
10 unavailability of professors often in the summertime, I
11 was going to suggest we just bump everything by about a
12 month, make that 9/30 for the first task.

13 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
14 On the time line?

15 COMMITTEE MEMBER PAPARIAN: Yeah. And something
16 like, you know, 10/1 to 11/1 for the second task and 11/1
17 to 12/31 for the third task. And again the reason --

18 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
19 I'm sorry, 11/1 to --

20 COMMITTEE MEMBER PAPARIAN: 11/1 to 12/31 for the
21 final report.

22 And, again, the reason is that in the first task,
23 it may involve some contacting of professors and so forth
24 who may be unavailable in the timeframe of 7/1 to 9/1.
25 And I wish I had that job.

1 CHAIRPERSON JONES: Okay. I have a question, I
2 guess for Mr. Paparian and for Martha.

3 I've been dealing with these tires for over six
4 years. I've sat in an awful lot of different
5 presentations throughout the nation. I've seen experts
6 come out of the academic field from Maine, I've seen them
7 from Arizona, I've seen them from an awful lot of states.
8 I've never ever seen a tire expert at one of these things
9 from California.

10 So I want part of this scope to not only be the
11 academics -- I mean, not only are these academics willing
12 to do this, but do they have a level of expertise that
13 doesn't down-grade our program? I mean, I prefer going
14 out of State to get an expert as opposed to staying
15 in-state and having somebody that's going to be on a
16 learning curve. That has to be part of this, because in
17 six years of going to every one of these things I have
18 never ever heard a presentation from an academic from the
19 State of California. Is that reasonable? I mean, they've
20 got to have a level of expertise, and we've got to be able
21 to know what's in the industry that this is an acceptable
22 level of expertise.

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
24 Task 1 does require the contractor to research that very
25 issue and see what is the level of expertise in the

1 current university system in California.

2 My observations align with yours. I have not
3 seen a current university having current expertise.
4 However, they might be able to establish such a program, a
5 Chair within a department, something that could build that
6 expertise. I think that then leads to a very good
7 question about what the funding level would be required
8 for that activity.

9 CHAIRPERSON JONES: So I'd like to make sure that
10 this -- that in this scope of work when we are identifying
11 these people, that they at least have a level of expertise
12 that is considered nationally acknowledged.

13 Is that -- I mean, I just don't want this thing
14 going backwards at this point. Is that a reasonable
15 request.

16 COMMITTEE MEMBER PAPARIAN: Yes.

17 CHAIRPERSON JONES: Okay. Thank you.

18 COMMITTEE MEMBER PAPARIAN: As I'm looking at
19 this, I think it's implied, but just to be sure, maybe we
20 might even have to include it in the scope of work -- one
21 of the main objectives -- one of the two objectives for
22 the research component of our five-year tire plan is to
23 establish an effective peer-review system that objectively
24 and independently evaluates research conducted. I think
25 it's implied that that would be one of the items that we

1 would look at for the universities to conduct. But I
2 realize that it's not -- may not be explicit in the scope
3 of work, unless I'm missing it. It certainly -- it's in
4 the agenda item.

5 And it may just mean, adding in the parentheses
6 something like "third-party peer review," the parentheses
7 of Item 1 amongst the work to be performed.

8 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

9 We could add peer review as one of the activities that
10 such a research center would conduct. I also -- I would
11 want to be careful not to limit ourselves to just the
12 research center for peer review as -- the wide variety of
13 activities that the Board's tire program is involved in
14 may not be reflected within any one institution. And we
15 definitely want to be able to go anywhere within the
16 country, indeed the world, if necessary.

17 COMMITTEE MEMBER PAPARIAN: Yeah, I realize that.

18 But actually in the five-year tire plan it says during --
19 it says, "the program will evaluate the creation of a tire
20 research center at one of California's universities," to
21 provide, among other things, this third-party peer-review
22 resource. So we actually did call that out in the
23 five-year tire plan as one of the things we would look at
24 for this possible tire research center.

25 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

1 As an activity the center could conduct -- I just want to
2 be careful it wasn't limited to them.

3 COMMITTEE MEMBER PAPARIAN: I'm ready to move it.

4 CHAIRPERSON JONES: All right. Go ahead, Mr.
5 Paparian.

6 COMMITTEE MEMBER PAPARIAN: I'll --

7 CHAIRPERSON JONES: Oh, wait, wait, wait, wait.
8 I'm sorry. I had one speaker's slip from Bruce Robeck of
9 CTR.

10 MR. ROBECK: Bruce Robeck from the California
11 Tire Recyclers.

12 I just wanted to add that it's very common for
13 academics to have their closest colleagues across
14 institutions rather than identified in single
15 institutions. And consortia should be an element of this
16 consideration. If the institutions can put together
17 agreements or whatever, that that should be a factor in
18 the investigation.

19 CHAIRPERSON JONES: Okay. Thank you.

20 COMMITTEE MEMBER PAPARIAN: Yeah, actually that's
21 a good suggestion perhaps again at the end of that --

22 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
23 For Task 2 perhaps, we could --

24 COMMITTEE MEMBER PAPARIAN: For Task one -- Yeah.

25 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

1 The analysis of candidate institutions might need to be
2 expanded to allow possible establishment of
3 multi-institutional consortia.

4 COMMITTEE MEMBER PAPARIAN: Yes.

5 Okay. So with the changes to the scope of work
6 that we've just discussed, I would move Resolution
7 2002-296.

8 COMMITTEE MEMBER EATON: Second.

9 CHAIRPERSON JONES: Okay. We have a motion by
10 Mr. Paparian, second by Mr. Eaton as amended of 2002-296.

11 Peggy, can you call the roll.

12 SECRETARY FARRELL: Eaton?

13 COMMITTEE MEMBER EATON: Aye.

14 SECRETARY FARRELL: Paparian?

15 COMMITTEE MEMBER PAPARIAN: Aye.

16 SECRETARY FARRELL: Jones?

17 CHAIRPERSON JONES: Aye.

18 All right. We would like to put this on
19 Committee consensus -- no.

20 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
21 It's going to be consent.

22 CHAIRPERSON JONES: Consent. Sorry about that.
23 Consent.

24 All right. Next Item is 64.

25 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

1 And this is the selection of the Office of
2 Environmental Health Hazard Assessment to perform the
3 feasibility study outlined in the modified scope of work.

4 CHAIRPERSON JONES: Mr. Paparian.

5 COMMITTEE MEMBER PAPARIAN: I'll move adoption of
6 Resolution 2002-297.

7 COMMITTEE MEMBER EATON: Second.

8 CHAIRPERSON JONES: We have a motion by Mr.
9 Paparian, a second by Mr. Eaton.

10 Would you call the roll.

11 SECRETARY FARRELL: Eaton?

12 COMMITTEE MEMBER EATON: Aye.

13 SECRETARY FARRELL: Paparian?

14 COMMITTEE MEMBER PAPARIAN: Aye.

15 SECRETARY FARRELL: Jones?

16 CHAIRPERSON JONES: Aye.

17 All right. That could go on Committee consensus.

18 Okay.

19 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

20 So I believe R, S and T are next in the series of items
21 that the Board Committee wishes to take up; is that okay?

22 CHAIRPERSON JONES: Yes.

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

24 Okay. Board Agenda Item 57 and 56, which are listed for
25 the Committee as Items R and Q, deal with the

1 consideration of scope of work and consideration of
2 contractor for the evaluation of the Rubberized Asphalt
3 Concrete Application Processes Contract.

4 This was a proposal outlined in the five-year
5 plan for \$600,000 which was made available.

6 The Board directed staff to enter into an
7 interagency agreement with CalTrans to conduct
8 side-by-side field tests of the three different rubberized
9 asphalt concrete technology processes. These are the wet
10 process, the dry process, and the terminal blend.

11 Staff first met with CalTrans to discuss this
12 interagency back in January. We have had two or three
13 meetings since then. We drafted a scope of work which we
14 submitted to CalTrans for comments. We have not yet
15 received back a scope of work with their comments on it.

16 Just one week ago, in phone conversations with
17 CalTrans, they expressed and then indeed sent in an E-mail
18 their concern that the Governor's ban on sole-source
19 contracts over \$100,000 would affect this particular
20 interagency agreement. We consulted with our admin
21 division, who feels it is not the case, that the
22 Governor's restriction on sole source does not apply to
23 interagency agreements and that this can proceed.

24 We have a meeting scheduled with CalTrans for
25 tomorrow afternoon with some members of their management,

1 Phil Stilarsky with their lab division, to try and shake
2 loose a scope work that the Board can act on, but we don't
3 have such a document yet.

4 CHAIRPERSON JONES: With the lab -- I mean, this
5 is where we had a huge problem before, was with their lab.
6 Is this going to be the same scenario?

7 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
8 From what I've seen, he is more of a mover and shaker.
9 I'm not sure why there has been reluctance on some of the
10 staff that we've been dealing with. But we're hoping to
11 resolve these issues tomorrow. It may not happen.

12 COMMITTEE MEMBER EATON: Can I ask the other
13 question?

14 If it does not happen, is this money -- can be
15 carried over or not carried over?

16 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
17 It would revert to the fund. And unless we had an
18 increase in our appropriation authority for next year's
19 budget, we would not be able to use it.

20 COMMITTEE MEMBER EATON: Okay. Do you know of
21 any local government or other agency or entity that would
22 meet the criteria for interagency that could perform an
23 analysis, such as perhaps either our RAC center or someone
24 else? Because CalTrans -- I mean, I applaud them for
25 trying to believe that they are, you know, like in the

1 category of a sole source. That would seem to defy, you
2 know, definition.

3 But I think that perhaps that just masks the true
4 reason, that they really don't want to do the analysis.
5 So, therefore, what are our options in terms of getting
6 the analysis done with regard to the process? Then they
7 can comment on it after the fact about why they weren't
8 consulted.

9 Is there such an entity, or are there entities
10 capable of doing -- we may not be able to get it in time,
11 but I'm looking at something in the future of being able
12 to just, you know --

13 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
14 My feeling just on the scale of the projects they conduct,
15 that the Los Angeles County Rubberized Asphalt Concrete
16 Technology Center might be the only other alternative.
17 And we could definitely discuss with them, but it is a
18 short time.

19 COMMITTEE MEMBER EATON: Right, it is.

20 CHAIRPERSON JONES: Okay. Mr. Paparian had a
21 question. And then I want to follow up on this one.

22 COMMITTEE MEMBER PAPARIAN: Yeah, just a couple
23 quick things.

24 Yeah, I also wonder if -- I know there have been
25 some discussions with -- is it Carl Monismith on the other

1 issues? I wonder if they're able to handle --

2 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

3 We've had two or three meetings with Carl Monismith. And,
4 in fact, staff have gone to the Richmond Field Station to
5 see what they're able to do. This is beyond the scope of
6 anything that they could conduct, to actually use three
7 different kinds of this paving material in a used section
8 out, you know, out in the highway to see how, you know,
9 trucks and cars and rain and snow, you know, affect it.
10 They have a heavy traffic simulator there, and it would be
11 a very different project.

12 COMMITTEE MEMBER PAPARIAN: The other question I
13 have, is it at all possible to allocate this contingent on
14 a suitable agreement with CalTrans so that we could
15 encumber this year's money and --

16 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

17 Sometimes you can develop just sort of an agreement to
18 agree, a memorandum of understanding or something, where,
19 you know, we will work out the details later. I would
20 certainly propose that in tomorrow's meeting if it doesn't
21 look like we can get anywhere on an actual scope of work
22 that would, you know, specify the recipes, the type, the
23 project, the site, the timeline, the timeframe, the
24 budget. You know, if we can't get that kind of detail out
25 of them, we might be able to at least get a commitment to

1 an agreement to do so.

2 CHAIRPERSON JONES: Is there the possibility --
3 another idea.

4 Is there a possibility to put this \$600,000 into
5 the northern California RAC center and, you know, for
6 ongoing projects, but then see if we can't do an agreement
7 with them that they could do this on some of the
8 Sacramento County roadways where we could get the same
9 testing? If they weren't able to do it, it would still be
10 money that would be put into an ongoing rubberized asphalt
11 tech center, which we did that in southern California
12 three times that I was here.

13 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART: I
14 don't see anyone from the Administration Division here. I
15 could talk to them --

16 CHAIRPERSON JONES: Actually, the boss is back
17 there, but that's Okay.

18 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
19 Stiff neck. It's hard to look around.

20 I'm not quite sure whether it would have to be a
21 separate agreement from the existing one, because this
22 certainly exceeds the funding of the existing agreement.

23 DEPUTY DIRECTOR JORDAN: And I'm a little rusty
24 on that particular contract.

25 Terry Jordan, Admin. Sorry.

1 Was that a competitively bid contract?

2 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

3 No, it's that hybrid interagency where it's a local
4 government entity. So it's not going out to bid. But we
5 end up with a standard agreement that's more similar to a
6 typical contract.

7 DEPUTY DIRECTOR JORDAN: Okay. We can certainly
8 look into that very quickly. Because typically when you
9 have another governmental entity, it's considered at the
10 State, you know, the same as an interagency with another
11 State agency.

12 And we can look at the dollar amounts as long as
13 it wasn't competitively bid.

14 CHAIRPERSON JONES: Right. I mean, I think if we
15 look at CalTrans to see if that option is open, and then
16 if the Committee members -- I mean, we look at CalTrans,
17 deal with those issues that came up in Committee, and then
18 also see if Sacramento County -- if the northern
19 California RAC tech -- the Rubberized Asphalt Center would
20 be willing to take that on where they could manage the
21 project and get us our test strips.

22 DEPUTY DIRECTOR JORDAN: We will have to take a
23 look at the scope and see how far outside of the current
24 scope it is or whether it's still within it.

25 CHAIRPERSON JONES: Well, we subsidized the

1 rubberized asphalt project through the tech centers. This
2 is a rubberized asphalt project.

3 DEPUTY DIRECTOR JORDAN: We can certainly look at
4 that.

5 COMMITTEE MEMBER PAPARIAN: Yeah, I know -- I
6 mean CalTrans is used to doing these sorts of comparisons.
7 I'd want to make sure that however it was done with the
8 RAC center, it was done in a way that people would accept
9 the results.

10 CHAIRPERSON JONES: Oh, yeah. I would agree.

11 Is it then that at the Board meeting you'll be
12 able to give us some options and maybe in between after
13 your discussions with CalTrans, we can have some
14 discussions as to what some of our options might be? Does
15 that work for the Committee?

16 COMMITTEE MEMBER PAPARIAN: You're meeting is
17 tomorrow?

18 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
19 Tomorrow afternoon.

20 COMMITTEE MEMBER PAPARIAN: So it sounds like at
21 the briefing perhaps we could have a short update if
22 there's anything to report on.

23 CHAIRPERSON JONES: Okay. That's 57 and 58,
24 right? Right.

25 All right. Now, we're going to -- what are we

1 going to --

2 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

3 Was it Item T?

4 CHAIRPERSON JONES: Fifty-nine.

5 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

6 Fifty-nine? That item will be presented By Nate Gauff of
7 the Special Waste Division.

8 MR. GAUFF: Good afternoon, Chairman Jones and
9 Board Members. I'm Nate Gauff with the Special Waste
10 Division.

11 Item T on the agenda today, which is Item 59 on
12 the Board agenda, is for consideration of contract for the
13 evaluation of Northern and Southern California Rubberized
14 Asphalt Concrete Technology Center Contract.

15 We're in the same boat as with the item we just
16 heard in that we don't have a contractor selected as of
17 yet or we haven't had our proposals returned for selecting
18 a contractor. We're supposed to get those in Wednesday.

19 So we were going to bring this item to the Board
20 meeting for your consideration.

21 CHAIRPERSON JONES: All right. So 59 is going to
22 be at the Board meeting once you've evaluated the
23 proposals.

24 MR. GAUFF: Right.

25 CHAIRPERSON JONES: Any questions, members?

1 All right. Item -- what are we at? We're at
2 Item V.

3 COMMITTEE MEMBER EATON: We have two remaining.

4 CHAIRPERSON JONES: All right. U is going to go
5 to the Board.

6 COMMITTEE MEMBER EATON: Going to the full Board.

7 CHAIRPERSON JONES: Right.

8 We do have one person from the public, Bruce
9 Robeck. This allocation issue is going to go to the full
10 Board. We're not going to make any proposal.

11 MR. ROBECK: I'm not going to be in objection.

12 CHAIRPERSON JONES: Okay.

13 MR. ROBECK: Bruce Robeck, California Tire
14 Recyclers.

15 I really want to talk about the residual balance.
16 We have, as everyone has been discussing, an issue with
17 Canadian crum rubber coming into California. And we think
18 that there would be a potentially good use -- and I'm
19 talking about 17,661 whatever -- there'd be good use to
20 provide some funds to assist in investigating counter
21 veiling duties that might go on, since the Canadians
22 subsidize their crum rubber at a substantial amount.

23 Most of the stuff that you've seen is roughly
24 \$1.50 U.S. And if some of those funds could be used for
25 that purpose, research or data collection or whatever,

1 that might be a good use of those funds.

2 CHAIRPERSON JONES: Bruce, I don't know if you're
3 coming to our Board meeting or not. I do have to ask you
4 one question though. I mean, in Indio, when the issues
5 kept coming up about the subsidy -- and I'm on your guys'
6 side, okay -- the folks that run an allnet company finally
7 had had enough, and in the last meeting, I think the town
8 hall meeting, made it clear that a lot of the vendors that
9 are here buy product from them. I mean, I understand
10 what -- the issue, as I see it, is when you're competing
11 and they are one of the players in the marketplace, they
12 have an unfair advantage, you know, if you're both
13 competing dollar for dollar on a project.

14 But if you're using -- if the companies are using
15 that same British Columbia operation as a source of
16 feedstock to fulfill other contracts, how are we going
17 to -- I mean, it seems to me that this thing gets murkier
18 and murkier every time I hear somebody open their mouth.

19 MR. ROBECK: Let me deal with the factual
20 situation who they are using. And I've been ensured by
21 the members of the Association they are not buying
22 Columbian, okay -- Canadian.

23 CHAIRPERSON JONES: All right. That's cool. I
24 mean you understand our concern, right? We're going to
25 walk down a path maybe that you guys would like us to walk

1 down and then have it blowup, that, in fact, all of you
2 are buying material or some of you are buying material to
3 get an advantage over the other partners. And that's
4 basically the testimony that was offered at the town hall
5 meeting. So --

6 MR. ROBECK: They have taken a blood oath.
7 They've slit their wrists and joined their blood and
8 everything. So --

9 CHAIRPERSON JONES: I feel better.

10 Thank you.

11 (Laughter.)

12 CHAIRPERSON JONES: Okay, Bruce.

13 We are -- okay. I have to clean up one -- oh,
14 no, we're still doing 56, right? We're doing that -- we
15 have 56 and V.

16 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

17 Yeah, V. I thought V was next.

18 CHAIRPERSON JONES: No problem. You know, I just
19 want to make sure we're not missing anything here. All
20 right.

21 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

22 All right. Item V on the Committee is actually
23 Agenda Item 1 for the Board. This is an item that was
24 carried over from the May agenda.

25 It's the consideration of award for Waste Tire

1 Enforcement Grant to the California District Attorneys
2 Association Circuit Prosecutor Project for Fiscal Year
3 2001-2002 waste tire funds.

4 The purpose of this grant is to have the
5 California District Attorneys Association assist
6 prosecutors in rural counties to investigate and prosecute
7 civil and criminal violations of the laws relating to the
8 storage and transportation of waste tires.

9 In the Board's five-year plan, on page 11, it
10 lays out the need to enhance the local enforcement program
11 through enforcement grants and to provide legal support to
12 these districts.

13 This grant would fund one new circuit prosecutor
14 specialized in the prosecution of waste tire cases and
15 seven environmental circuit prosecutors to assist that
16 prosecutor.

17 In addition, the grant will fund an investigator
18 assigned to waste tire cases and to provide services to
19 other local existing investigators.

20 The grant amount is \$325,000. That is a change
21 from the Board agenda item of last month where we were
22 asking for \$318,000. It has to do with the funds that are
23 available for reallocation. The amount has gone up, and
24 you'll hear more about that in the last item.

25 This item has gone through quite a bit of review

1 and discussion. I understand that the legal office and
2 the California District Attorneys Association have met
3 with Board members, particularly I think with Member Eaton
4 for some of the concerns he'd expressed earlier.

5 We have included a scope of work with this item
6 to let you know what tasks would be conducted under the
7 terms of the grant. This is somewhat different from some
8 of the other grants that you approved earlier today -- the
9 East End Project Grant and the San Francisco Project
10 Grant -- because these are services rather than an actual
11 thing being built. We thought the Board and the Committee
12 members would like to see what those services will be.

13 We are still in the negotiation on some of the
14 details of those services. And this is not unusual in a
15 grant program where we evaluate and award for the intent
16 of the grant, the concept. But the actual terms and
17 agreement of the -- terms and conditions of the grant
18 agreement are worked out after award.

19 So it is possible that there will be some further
20 refinements on tasks and budgets.

21 So we have someone from -- unless he's left. I
22 haven't looked. We have Gale Filter here from the CDAA as
23 well as our legal office staff, if you have questions.

24 MR. FILTER: Good afternoon, Mr. Jones, Mr.
25 Eaton, Mr. Paparian. My name is Gale Filter. I'm with

1 the California District Attorneys Association. I'm the
2 Director of the Environmental Project as well as the
3 Circuit Prosecutor Project.

4 What I did today was I put some materials
5 together for you. I'm not going to spend a great deal of
6 time on this. But I would like -- after the discussion
7 that Mr. Eaton was so gracious to have with us and Ms.
8 Tobias and her legal staff, I think perhaps I can give you
9 an overview exactly what this proposal is about.

10 First, the reason the district attorneys are
11 submitting this proposal is, if you look at the first
12 attachment to the materials that I gave you, two things
13 become apparent in this: One, that what is known as the
14 Circuit Prosecutor Project has an incredible amount of
15 experience doing waste tire cases; I would say more than
16 any other prosecutorial agency in the State of California
17 and perhaps even the United States.

18 Our agency -- or our project was involved in the
19 Westley tire fire case. Two of my attorneys spent over
20 1,500 hours in that case.

21 That brings to us why I'm here. The reason I'm
22 here is that the district attorneys, particularly in the
23 rural county, are looking for assistance because they
24 don't have the resources to prosecute these type of cases,
25 be they civil or criminal, when they're referred to the

1 office.

2 So given that, what I'm here to suggest to the
3 Board and submit as a proposal is this, that you entertain
4 the thought of giving us a package of \$325,000 for one
5 year, \$325,000 for the second year, and a two-year pilot
6 project that will enable us to do, among other things,
7 provide both a prosecutorial function in 30-some rural
8 counties, as well as to network with both State and local
9 agencies in terms of providing educational services on how
10 you process these cases.

11 Specifically, the proposal goes to this, that
12 there will be two roundtables in the southern part of
13 California that would bring in agencies at the local,
14 state, and prosecutorial levels; two in the northern part
15 of the state that would bring in the same type of people;
16 and that there would be a statewide workshop. And I've
17 discussed this with the people at CDA and our training
18 consultants and the data. That would be sometime in
19 February to be held in Palm Springs.

20 Also, in -- I love the way that this was put to
21 me. From Mr. Eaton's perspective, he wants to know
22 specifically how the Waste Management Board gets -- what
23 bang do they get for their buck. When I was in the
24 military it was known as rumble for the rouble, but I'll
25 take bang for the buck.

1 What that I think gets you is this:

2 That if you look at the exhibits that are
3 attached, we provide training. That's what the District
4 Attorneys Association is known for. We put over 60
5 trainings a year for prosecutors, investigators, and
6 regulators throughout the State. That's our expertise.

7 My expertise, for example, is prior to becoming a
8 prosecutor, I was a tenured junior college instructor for
9 10 years; and prior to going to work for CDA I was a
10 frontline prosecutor with the Imperial County District
11 Attorney's Office for 10 years, doing everything from
12 petty theft to capital murder cases.

13 We keep accurate records of what it is that we
14 do. I have also submitted to you as an attachment what
15 our first quarter report was for the Environmental Circuit
16 Prosecutor Project. It lists the cases that we have done
17 over a period of four years. As it stands, we've done
18 over 750 environmental cases, Fish-and-Game cases in the
19 State of California; and we have brought in almost \$15
20 million -- over \$15 million in fines, penalties and
21 supplemental environmental projects.

22 If you look, we provide a narrative on a
23 quarterly basis, and we also submit an itemized accounting
24 for the services that we provide.

25 Mr. Eaton's concern was, "Well, look, is this

1 money really going to go to helping the Waste Management
2 Board out in its enforcement in educational activities or
3 is it going to become a subsidy for the Circuit Prosecutor
4 Project?"

5 You know, what I would submit to you is that if
6 you really look at this, it's clear that what you're going
7 to get is one prosecutor, one investigator to coordinate
8 with the 30 rural county district attorney's offices. In
9 the event that it's a small tire case, then what happens
10 is that it'll be farmed out to one of the circuit
11 prosecutors, for example, in Humboldt County, and that
12 prosecutor will have a case presented to him by the person
13 who's taking a lead in the investigation and putting
14 together the case, and then it will be taken to the
15 district attorney. And that circuit prosecutor for that
16 particular jurisdiction will be assigned to deal with that
17 case. Thus \$325,000.

18 Let me sort of close this with a couple points.
19 One, is that a year and a half ago, I submitted a similar
20 grant proposal to the Department of Industrial Relations
21 for \$325,000 a year, which was appropriated to the
22 District Attorneys Association for a Worker Safety Circuit
23 Prosecutor Project. That \$325,000 is for two circuit
24 prosecutors and one investigator. And the reason that
25 it's structured differently than what this proposal is is

1 because those two prosecutors and investigator handle all
2 worker safety cases for the 32 rural counties that they've
3 been assigned to, unlike what this proposal is.

4 Finally, the last thing I think was an excellent
5 idea, and I'm not going to go so far as to genius, but it
6 was an excellent idea. Mr. Eaton suggested that perhaps
7 at the end of 18 months that there would be an evaluation
8 process. That is, once you reach 18 months on this,
9 submit the thing and see if it's working, see if it serves
10 the interests of the Waste Management Board, see if it
11 serves the interests of the District Attorneys
12 Association, and then submit to the Board what the
13 findings are and what the activities have been with the
14 Circuit Prosecutor Project in the 32 counties.

15 I want to thank you for your courtesy and your
16 consideration. And I also want to tell you what I heard
17 earlier, that every contact I've had with members of your
18 staff or Board members has been a professional one and
19 most courteous.

20 Again, thank you very much.

21 CHAIRPERSON JONES: Thank you. I have a
22 question, and some members may.

23 Just so I have this straight. Now, the circuit
24 prosecutors are going to be working in an area that may be
25 four or five counties, right?

1 MR. FILTER: They do that already, Mr. Jones.

2 CHAIRPERSON JONES: Right.

3 If there is a small tire case that a local D.A.
4 doesn't think is worth the time, who makes that call as to
5 whether or not that gets prosecuted?

6 MR. FILTER: The district attorney always makes
7 the call because they're the only ones that have the
8 authority to decide to file a case or not. They're the
9 only ones that have a filing authority.

10 But I should point out to you that our
11 business -- you know, the big cases, the grand cases are
12 basically the cases that are handled by the Attorney
13 General or the U.S. Attorney's Office. We're in the
14 business -- and I don't mean this in a negative sense of
15 doing the nickel and dime cases.

16 Last Tuesday night I was at an environmental
17 conference where the Circuit Prosecutor Project was
18 awarded by the Mountain Lion Foundation for the poaching
19 work it does. And what they were -- really what the award
20 is we're doing cases that nobody else wants to do. The
21 conspiracy to take abalone, for example, in one area; in
22 another area perhaps taking bear, illegal bear poaching --
23 those are the type of cases that to the counties in which
24 they occur are big cases; to the people in Sacramento or
25 Los Angeles, you know, they're just other -- less of a

1 concern, let's put it that way.

2 CHAIRPERSON JONES: In 876, we had language in
3 there that I think we had to change, of something that
4 basically said that D.A.s or city or county counsels had
5 to prosecute these cases if we need them to. I forget the
6 exact language.

7 What I'm real concerned about is while the
8 authority lies with the D.A., there are times when it's
9 critical to this Board to do an enforcement action. And I
10 want to make sure that if we're going to spend this kind
11 of money, that we've got the understanding, however it's
12 going to be -- that there may be one that Brad Finoccio in
13 Placer County says, "I don't want to do." But this Board
14 may really want to do it. I want to know who's going to
15 do that case.

16 MR. FILTER: Well, let me put it this --

17 CHAIRPERSON JONES: You guys are our staff.

18 MR. FILTER: Well, let me put it this way. The
19 reality of the world is this, that any case is always
20 going to be based upon the evidence that is presented to
21 the people that want to enforce the case. If the case
22 does not merit an enforcement action on a criminal basis
23 because there's insufficient evidence, it's my
24 responsibility if I'm bringing that case to the D.A. to
25 tell them that there is no evidentiary basis to prosecute

1 this case on a criminal basis.

2 I get called on that all over the State by the
3 district attorney from Los Angeles or whatever the case
4 may be.

5 On the other hand, it's interesting to give you
6 an example that you were probably familiar with. In the
7 Westley tire fire case we made the suggestion, I thought
8 initially, that that case should have gone criminally.
9 And in consultation with my prosecutors and the Attorney
10 General's office, there was no availability to go on a
11 criminal prosecution; thus that's the reason that the case
12 went out on a civil basis. And to be honest with you, I
13 think that's a significant case for all parties involved.

14 CHAIRPERSON JONES: No, I agree. But, see, the
15 beauty of the story that you just told, two of the Board
16 members sitting at this dais sat in a room with Russell
17 Hilldreth and others and made the determination as to --
18 or maybe not the determination, but at least had a little
19 bit of input into what made the most sense based on, you
20 know, the evidence that the attorneys had brought to us.

21 And I guess I'm asking the same thing. I mean I
22 want to have a level of confidence that if -- there are
23 some -- we get in arguments as Board members with our
24 staff, right? Somebody is hauling stuff illegally and
25 they've got a truck that's only worth five grand. Maybe

1 it's not worth our effort to get that truck. But in my
2 mind, that truck is worth a million dollars because that's
3 the only piece of equipment that guy has got that lets him
4 break the law. I want the truck. I want to tie it up. I
5 want to cut it into pieces.

6 We have disagreements about stuff like that. I
7 want to know if -- you know, I mean for this 325 grand, I
8 want to make sure that, you know, our enforcement activity
9 is going to hit somebody's radar screen, and it doesn't
10 have to be a Westley Tire.

11 MR. FILTER: Here's what I think it -- I think
12 this is what it buys you specifically. What it buys you
13 is prosecutors and an investigator that are devoted full
14 time to this particular activity. It also buys you the
15 services of circuit prosecutors in particular rural
16 counties that can open the door into a D.A.'s office
17 because they're living in those particular counties. They
18 know what the problems are. They even -- you know, some
19 of the cases that I see up in the northern part of the
20 State involve, for example, tires on indian lands. Those
21 raise all kinds of legal issues that I don't even begin to
22 say I have an understanding of. All I do know is that
23 they provide a lot of issues.

24 The thing that we do provide, the bottom line,
25 and it is that we provide a service of networking. It

1 isn't a question of where we want to tell you how to do
2 your job. What we want to really do is work with you
3 because these cases are deemed by the Board to be
4 important, and we believe that we can help you enforce
5 those cases.

6 Will it be 100 percent successful? More than
7 likely, not. Will it be successful? Given the experience
8 that has happened with the Environmental Circuit
9 Prosecutor Project, given the experience that's happened
10 with the Worker Safety Circuit Prosecutor Project, I have
11 to tell you yes.

12 Recently in May, this year, the U.S.
13 Environmental Protection Agency did a survey across the
14 United States of those environmental entities that have
15 the greatest success rate. The California District
16 Attorneys Circuit Prosecutor Project was one of five
17 entities -- only five -- throughout the United States that
18 received marks right across the Board for meeting all ten
19 of their objectives.

20 I think it's a great project. I'm not just
21 saying that because, you know, I'm standing up in front of
22 you. I'm saying it because I've seen it work and I've
23 seen it do cases -- and that's the most important thing --
24 I've seen it do cases that otherwise would not be done in
25 rural California.

1 CHAIRPERSON JONES: Okay. Thank you.

2 Kathryn.

3 CHIEF COUNSEL TOBIAS: I think that Mr. Filter
4 has said most of what I was going to say. But I do think
5 short of either political issues where perhaps somebody is
6 involved that a D.A. wouldn't want to see charged, I think
7 most of the time what this program does offer is the extra
8 hands to bring -- to get the work done. And I think
9 that's what keeps D.A.'s from, you know, really being that
10 interested in a lot of our cases, is that they've just got
11 bigger fish to fry.

12 When the circuit prosecutors come in -- and I am
13 familiar with some of the other attorneys who work in
14 these other areas besides just the tire work -- I do think
15 that most of the D.A.'s are happy to bring these forward
16 when they've got somebody who's actually done the
17 investigative work and has basically prepared the whole
18 thing and is taking it forward.

19 So I think, you know, generally the D.A.s are
20 very supportive of this, and we'd get more of our cases
21 handled.

22 CHAIRPERSON JONES: Mr. Eaton.

23 COMMITTEE MEMBER EATON: Yes. And since it was
24 at my urging that this be carried over, I wanted to thank
25 Mr. Filter and also James Fervenza, who attended at least

1 two of the meetings I had with them, as well as our legal
2 office, because there were a lot of issues that lacked
3 clarity I think on all sides basically. And it gave us an
4 opportunity to look at those issues and to really become
5 familiar with one another's idea and perception of what
6 was going on.

7 For instance, just one of -- we take a lot of
8 pictures in our flyovers. But how is that information
9 going to get communicated to Mr. Filter's operation? That
10 would be, you know, where other times they're looking for
11 someone to blow the whistle, you know, uncover some
12 illegal piles. We have a lot of that information
13 available to us right now that we're doing.

14 So how would they work with our legal office?
15 How would that take place? The duration of the contract?
16 Some of the other things. And my understanding is that
17 they're still meeting with the legal -- our legal
18 department to cross the T's and dot the I's; is that
19 correct? I mean we've still got a little bit left to go.
20 I mean we're close --

21 CHIEF COUNSEL TOBIAS: Well, I think what's
22 perhaps important to understand here is that, yes, we are
23 still talking about some of the more -- the management
24 types of things. But I think the broad outlines of the
25 project are there. And I think Martha's prepared to tick

1 off several of those points.

2 It might help to understand that I think that Mr.
3 Filter has put forward a proposal. Staff also in working
4 with him basically has a proposal that's relatively
5 similar to his, with one or two differences. So I think
6 that Martha could basically tick through some of the
7 things that I think you particularly called out the last
8 time.

9 But the kinds of things that we're still
10 negotiating on right now, you know, I think are
11 nuts-and-bolts kinds of things. But if we could go over
12 kind of the main points and see if you have any more
13 issues on kind of the more substantive as opposed to
14 procedural, unless you want to talk about that.

15 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
16 Well, I do have a procedural issue to talk about, too.

17 CHIEF COUNSEL TOBIAS: Okay.

18 CHAIRPERSON JONES: Before you start, I want to
19 ask Kathryn a question.

20 A lot of the issues that were needed to be
21 resolved sound like they are getting resolved to a certain
22 extent.

23 The contract issues where -- you know, I think it
24 would make sense that if some of those specific issues
25 were any of the members' areas of concern, would we not be

1 able to do a review of some kind, individually or
2 whatever, some mechanism to make sure that some of those
3 issues, that a member would caution us with?

4 CHIEF COUNSEL TOBIAS: I think the Board has done
5 that in the past where they've, well, basically assigned a
6 person to look at the agreement as we finish it up. And I
7 think if the Board wanted to do that in this case, we
8 could certainly do that. Did you want to --

9 CHAIRPERSON JONES: Well, before you go there,
10 I -- and I want to see what our options are. Because I
11 know Mr. Eaton had some issues, and I think it's good
12 because, you know, we've all -- there's nobody on this
13 Board that hasn't had issues with certain items. And they
14 always seem to come out better in the wash.

15 If we were able to hear this proposal that
16 Martha's got, but we're pretty close, the award of a
17 contract or a grant by this Board is still predicated on a
18 signed agreement, correct?

19 CHIEF COUNSEL TOBIAS: Correct.

20 CHAIRPERSON JONES: All right.

21 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
22 The procedural issues I wanted to talk about deal more
23 with the administrative side of a grant program.

24 Normally, when we're doing a competitive grant,
25 the Board votes on the criteria by which the grant will be

1 judged and ranked. We come back to the Board with the
2 staff's work in doing that ranking, and the Board approves
3 it and tells us to enter into those specific grant
4 agreements. We don't typically bring before the Board the
5 terms and conditions of each and every grant.

6 There is a lot of boilerplate in there. But
7 there are also specifics tied to each project based on the
8 description they submitted in their application that
9 reviewed and ranked.

10 So it's sort of an administrative type activity
11 that doesn't always require a Board decision. As you saw
12 earlier today with the East End Project in the San
13 Francisco concourse, we do get unsolicited noncompetitive
14 grants coming before the Board which we choose to consider
15 them because of some, you know, merit for that particular
16 project.

17 In that case, what we usually have is a project
18 description, maybe a little more detailed than what you've
19 seen as a criteria in a grant -- a competitive grant, but
20 it's not anything as detailed as the actual grant
21 agreement that will be developed after the Board has
22 approved that award.

23 So this particular item is sort of falling in
24 between a couple of different types of activities.
25 Because we had been in negotiations with CDAA for awhile

1 trying to develop some of these very details on, you know,
2 who do what and report to whom and how much it would cost
3 and how many years and, you know, how many people, we have
4 more information that we can present to the Board. But we
5 don't yet have the completed final terms and conditions.

6 So the Committee and the Board will have a choice
7 to make. They can approve this award. They could say
8 we've gone far enough along that that you feel that staff
9 understands the Board's concerns and that we will be
10 developing those terms and conditions per Board direction
11 and approve the award here and then at the Board next
12 week; or you could say you want something in more detail.
13 Do you want to see those I's dotted and those T's crossed.

14 I do only have to point out there are time
15 constraints. If the Board is uncomfortable with what
16 we're proposing here and wants the consideration off, then
17 the funding would have to come out of next fiscal year's
18 monies. And in most -- most likely we would not know
19 what's available until a little later into the year. You
20 know, as we march down through the projects already
21 outlined in the five-year plan, we would have to find a
22 source for the funding.

23 CHAIRPERSON JONES: Martha, what I was trying to,
24 in my question to Kathryn, was to alleviate a lot of those
25 problems. I think -- I mean, I want to wait and see how

1 this comes out, but I think that if a lot of Mr. Eaton's
2 questions have been answered to this point, we're probably
3 at a certain point, there may be some issues that still
4 need to be worked on. That doesn't mean that we have to,
5 you know, stop dead.

6 So I was just trying to lay out some options.
7 And they weren't quite as -- they weren't quite like
8 yours.

9 Go ahead, Mr. Eaton.

10 COMMITTEE MEMBER EATON: I think, for your
11 direction, the issue for me, what I have is, yes, both
12 sides are there, I know, as knowledge issues. What I'd
13 like to see is -- I don't need the finalized document in
14 terms of conditions. But I would like to set what the
15 parameters are. And what I have before me is what Mr.
16 Filter had discussed previously with me. And then I know
17 that there have been some other discussions between staff
18 and legal with Mr. Filter as to what those parameters are.

19 So next week -- I mean, I don't have a problem,
20 you know, supporting that we will be funding CDAA. At
21 what level and duration and those, those are the things
22 I'd like to kind of get next week so the full Board can
23 see what they are getting for their dollars and what
24 basically are the parameters. It's not anything where
25 we're going to sort of, you know, submarine them and

1 not -- say we're not going to fund them. The question
2 really becomes what additional things are there that are
3 still there that are the larger items.

4 So there's kind of a hybrid from where you were
5 from a finalized product of terms and conditions and just
6 before. Because if you go back through -- and it's no
7 fault of you, Martha, or your Department or the Legal
8 Department -- there was none of this in the item in terms
9 of duration. There was confusion about the total amount.

10 Mr. Filter and I even had discussions, "Well,
11 what is it that you actually are looking for?" And he'd
12 give me, and then we went through the item. And that was
13 really our problem; it wasn't his problem. And so we've
14 come a long way on that, as well as some of the reporting
15 requirements and stuff. And there may be other issues.

16 And so what I'd like to see is what is the basic
17 parameter and so that we go there and it comes to the
18 Board next week and we get it done. It's that simple.

19 CHIEF COUNSEL TOBIAS: And could we spend a
20 couple of minutes now? I know everybody wants to finish
21 up. But could we spend a couple of minutes just going
22 over what staff's proposal is so that you all could be
23 thinking about that?

24 CHAIRPERSON JONES: Absolutely.

25 But just one thing for the record. Acknowledge

1 that Mr. Roberti is here.

2 Thanks.

3 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

4 Okay. One of the issues was the timeframe. What staff
5 had originally been proposing was that this would be a
6 two-year agreement. However, we'd only been considering
7 funding from one year, the \$325,000 available this year.
8 At the midpoint, the Board could have an evaluation. And
9 this was where Mr. Filter mentioned 18 months -- and I was
10 thinking more along the terms of 12 months -- to have an
11 evaluation of where we are and whether we want to provide
12 the additional second-year funding at that time.

13 So that was one of the details that we're working
14 out slightly different from what Mr. Filter had proposed.

15 But what staff would like to see is that we --
16 the Board approves the \$325,000 available from this fiscal
17 year, enter into a two-year agreement where there is an
18 evaluation at the midpoint and the possibility of
19 continued funding for that second year. So that's one of
20 the issues we --

21 CHAIRPERSON JONES: Out of \$325,000 on a level --
22 for the second year?

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

24 Correct.

25 Then there are a couple other outstanding issues,

1 as I understand it. It's the method of requesting
2 payment. And at any point that the Legal Office wants to
3 jump in -- some of these terms are a little bit strange
4 for an engineer to be dealing with.

5 The discussion is whether the attorneys and
6 investigators use a billable hour method, as has been used
7 with DFG, Department of Fish and Game, which has a grant
8 agreement with CDAA. So we're recommending a billable
9 hours approach. It will allow for prorating enforcement
10 cases so that part of a cleanup project could include tire
11 clean up and will allow greater flexibility for which
12 attorneys and investigators work on cases. So that's one
13 of the issues that we were looking at.

14 There's a question about the administrative
15 overhead. We would like to have the administrative
16 overhead to be included in the amount of the employees'
17 billable hours.

18 MR. FILTER: Can I just stop you there for one
19 second, which I'll probably offer some clarity to the
20 Board; is that all of our circuit prosecutor projects has
21 an overhead by an in-kind contribution by the various
22 rural county district attorneys, which amounts to 20
23 percent. In other words, office space, secretarial help,
24 whatever the administrative -- Xeroxing, whatever the case
25 may be -- across the Board, that that's supplied by the

1 district attorneys. So that went in -- I think Mr. Eaton
2 and I discussed that briefly or we never got to the end of
3 it. But I think that will answer some of what it is that
4 Martha's driving at.

5 COMMITTEE MEMBER EATON: Just underscores my
6 point that I'd like to have something a little more -- we
7 now are almost to the point where I think Mr. Filter and
8 our staff are close. They can put together a one,
9 one-and-a-half page document. I think that the doubt in
10 terms of supportive or not supportive of the overall
11 concept of them participating, and helping us fill a void
12 really, has been laid to rest, if it was ever raised in
13 that context, I think; and next week we'll be able to move
14 forward on it. And these issues really should be -- but
15 Martha should finish whatever other points she has, you
16 know.

17 CHIEF COUNSEL TOBIAS: Well, actually let me
18 mention two more things that I think we're still talking
19 about, too. And I think that's why we wanted to basically
20 have this discussion; if there's anything else that you'd
21 like to bring up or that we should be talking to them
22 about, today would be a good time to do it.

23 We're still talking about the amount of training.
24 Mr. Filter talked about, you know, the reputation, I
25 think, that CDAA has for training. We're talking about

1 how much training needs to be a part of this and how much
2 of this money really should be just put straight into
3 enforcement. So that's something that we're continuing to
4 talk about. If you have some sense of --

5 COMMITTEE MEMBER EATON: Yeah. And obviously one
6 of the issues for me -- and while I express, you know, in
7 even more blunt terms than Mr. Filter cares to admit today
8 in public -- some of my concerns, one of the issues that
9 really was distressing to me was the fact that our Local
10 Government Grants Program has been undersubscribed, in
11 that -- how do we get the locals -- because, if you
12 remember, the whole idea of the bill was to basically try
13 and get the locals to take some of this money to do some
14 of the work themselves. That's not obviously occurring,
15 for whatever reasons. Not because our staff isn't going
16 out there and trying to give them the money.

17 But CDAA can fill that function and perhaps even
18 get some of that grant money and dollars going in as
19 remedies and what have you. And so that was part of the
20 training function, at least that we discussed. And how
21 and to what extent, I leave it up to really you guys to
22 kind of figure out.

23 But there is a void there as to how we get these
24 individuals up to speed at the local level to be able to
25 want or to be desirous that these cases are cases that

1 should be brought forward and can actually, you know, not
2 tax their own workload, but in the end give them some
3 education. Because I believe that under the statute, any
4 recoveries and things of that nature goes to the local
5 D.A.s. And that's something that's part of the
6 curriculum. It's not a real big attractive -- but there
7 is money out there, and so how we'd be creative about it.
8 So that was sort of more of the educational function that
9 we discussed and how that was not occurring; not because
10 we didn't do it; it's just they're not doing it, they're
11 not coming forward with the money. So it really filled a
12 void.

13 CHAIRPERSON JONES: Maybe when they train the
14 D.A.s, they have to bring their code enforcement people
15 with them or something like that.

16 COMMITTEE MEMBER EATON: Right, yeah.

17 CHIEF COUNSEL TOBIAS: I do think we see those
18 two coming together, is to basically work those counties,
19 both where they have an enforcement grant but they're not
20 using it or they don't have one and they haven't come in
21 for it, and to kind of push them along.

22 The other thing that I think we've kind of
23 mentioned to Mr. Filter, only in passing, and we want to
24 talk about, is that we'd like to see -- as you notice in
25 the item, it was at 311 and we're back up to the 325 in

1 terms of asking for approval for that amount. We'd like
2 to see that difference, that \$14,000, be used as a
3 reimbursement of investigative expenses. I understand
4 that what happens sometimes is that we have an
5 investigator with this project; if that investigator is in
6 Fresno and somebody else needs help in, you know, some
7 other county and wants to go to the D.A. in that county
8 and say "Can I use your investigator for a couple of
9 hours?" we would reimburse them on a tire-related case.

10 And so there would be, of course, the
11 documentation for that. But it would just be the ability
12 to go in on a fast basis, use somebody else's investigator
13 when they're ready to track somebody right at that point,
14 and then reimburse them. So it's just a little bit -- you
15 know, again to use as many resources as we can get.

16 CHAIRPERSON JONES: Okay. Where are we? Let's
17 wrap it up quick. We're bringing this thing back to the
18 Board. You guys are going to look at -- you're going to
19 continue to understand each other's needs, right?

20 CHIEF COUNSEL TOBIAS: Well, we'll bring forward
21 something to the Board meeting that basically brings these
22 two together, so that you're not talking about two
23 different proposals at the Board meeting, that ticks off
24 the kinds of things that we've talked about both today and
25 that Mr. Eaton has raised.

1 But again, it may not be all the nuts and bolts
2 of a final agreement, but it will be these, you know,
3 things I think that people want to talk about and want to
4 understand how it's going to occur.

5 CHAIRPERSON JONES: If it is possible, if you
6 have time to either brief Mr. Eaton or myself or any other
7 member on this Committee or the Board --

8 CHIEF COUNSEL TOBIAS: Maybe we can circulate
9 that --

10 CHAIRPERSON JONES: -- with what you've finalized
11 prior to the Board meeting.

12 CHIEF COUNSEL TOBIAS: Okay.

13 CHAIRPERSON JONES: That would be helpful.
14 Because it sounds like we have agreement that this is a
15 program that is going to work; let's not lose that because
16 we're not informed prior to the meeting and we get
17 surprised.

18 CHIEF COUNSEL TOBIAS: Okay.

19 CHAIRPERSON JONES: Does that work for everybody?

20 All right. Then members -- does that work for
21 the members on the Committee?

22 COMMITTEE MEMBER PAPARIAN: Works for me.

23 CHAIRPERSON JONES: All right. Thank you.

24 We have one last item, which is Item 56, which is
25 Q, right? And I have two speakers on this when we get to

1 that point.

2 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

3 Item 56 on the Board agenda, Q on the Committee agenda, is
4 the consideration of proposed applicant eligibility,
5 project eligibility, scoring criteria and evaluation
6 process for the Fiscal Year 2002-2003 Tire Product
7 Commercialization and Research Grant Program.

8 As you're very familiar with, the Board has
9 awarded this grant in past years. And we are bringing it
10 back for the fiscal year 2002-2003 cycle. Two million
11 dollars has been allocated under the Board's five-year
12 plan for the management of waste tires.

13 In this instance, the staff is proposing to
14 include funding of research conducted to develop waste
15 tire products and waste tire recycling technologies, as
16 well as to include the normal projects that directly use
17 or produce waste tire products.

18 Let's see. We want to ensure that these projects
19 promote the commercialization of new and existing products
20 that will consume significant quantities of California
21 tire-derived rubber or develop new products that will have
22 the potential to consume large amounts of waste tires.

23 Eligible applicants are research institutions,
24 businesses and other enterprises with projects located in
25 California.

1 The maximum amount for each grant is \$250,000,
2 with a required 50 percent match of the grant amount.
3 That would be at least a \$125,000 match then if you were
4 applying for a \$250,000 grant.

5 If a company from out of state or even out of
6 country wishes to apply, they may. But the project itself
7 must be located in California. And any equipment
8 purchased with the grant funds must remain in California
9 for five years after completion of the grant term.

10 We have sort of a funny little juncture here on
11 the timeline. One of the items that will be heard by the
12 Administration Committee is the Grant and Administration
13 Unit's revision to the general grant criteria that have
14 been developed at Board direction. And I know you're all
15 familiar with it because the staff has been interviewing
16 Board members to get their take on how the new general
17 grant criteria should be conducted. What we are proposing
18 here is that the Committee today look at just the
19 program-specific criteria. We will be folding in those
20 new general grant criteria when the Board acts at its
21 meeting.

22 So what we've got here today are the Criterion 8,
23 9 and 10. Criterion Number 8 provides a scoring system
24 for the different types of projects that might be coming
25 in to the Board. We are proposing that 20 points would be

1 awarded if the project is the production of molded rubber
2 products; 15 points for the production or use of crum
3 rubber of devulcanized rubber; 10 points for the
4 production of tire shreds; 5 points for other uses.

5 There's an error in the agenda item we'll try and
6 correct for the Board meeting; and, that is, that we give
7 definitions for -- we said Criterion 9, and it should be
8 Criterion 8 there.

9 And the definitions that apply to Criterion 8 for
10 crum rubber is waste tire particles that are a quarter
11 inch or less in size. Devulcanized rubber is rubber that
12 has undergone devulcanization, which is defined as the
13 process of breaking the sulphur crosslinks in vulcanized
14 rubber. And that can be accomplished by using chemicals,
15 steam, mechanical action or sonic or electromagnetic
16 energy.

17 Criterion number 9 is evidence of a market
18 potential to absorb a certain number of tires. And we
19 award points based on the number of tires used by that
20 project. And it ranges from 10 points for about 200,000
21 per year in addition consumed by the project up to 20
22 points for more than a million tires used in a year.

23 That would be for an actual commercialization
24 project when we are buying equipment or helping someone
25 get a new production line started.

1 If it's a research project, then that criterion
2 would be applied as saying evidence of the likelihood of
3 success of research and development into waste tire
4 product commercialization and/or innovative waste tire
5 recycling technologies. So we're leaving it a little more
6 broadly on that one. That's to acknowledge the fact that
7 the research project itself may not consume a large number
8 of tires. But if that technology then is implemented in
9 the future, that technology has that potential.

10 And then Criterion 10 is that the applicant has
11 not been awarded by the Board any grant within the last
12 three fiscal years. And there's an error there. It
13 should be 1999-2000 fiscal year through 2001-2002. And
14 that's five points trying to get some new faces here at
15 the table.

16 The timeline that we are trying to work under is
17 if the Committee and the Board approve these criteria, the
18 notice of funds available will be issued in July; there
19 will be a question-and-answer period through July and
20 early into August; we will require applications be
21 postmarked by September 6th; and we will bring the staff's
22 recommendation for award to the November Board meeting.

23 At this point, I'm available to answer any
24 questions.

25 CHAIRPERSON JONES: Okay. We have three

1 speakers.

2 But any members have questions at this point?

3 COMMITTEE MEMBER EATON: I just have -- on the
4 new faces issue -- and I understand why, so we can bring
5 more and more people here. But is there ever an instance
6 where we're dealing with these types of grants wherein --
7 what would be the maximum amount, 250?

8 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
9 Correct.

10 COMMITTEE MEMBER EATON: Is there a need because
11 there is such an infancy within this particular sector
12 that a second grant would actually be beneficial in order
13 to continue to prime the pump because it needs -- I mean,
14 or is it just sort of like you have one vaccine and,
15 therefore, you're cured? And I know it's always a
16 difficult issue. And maybe it can get, you know, settled
17 within regard to the point. So you're not -- if you've
18 previously been awarded, what you don't do is you don't
19 get the five points, correct?

20 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
21 Correct.

22 COMMITTEE MEMBER EATON: Do you get any points?

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
24 Under other criteria. But that particular criterion has
25 only five points available for the new applicant.

1 COMMITTEE MEMBER EATON: Right. So it's
2 either/or?

3 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
4 Yes, it's zero or five.

5 COMMITTEE MEMBER EATON: Right. Okay.

6 And then is there anything in the grant criteria
7 which prevents a middleperson, a middleman, a middlewoman,
8 from benefiting where -- my understanding of these grants
9 is we're trying to get industries built up or we're trying
10 to get manufacturing processes where someone just comes in
11 and is a middle, "Because I know so-and-so and I can get
12 them to make this," and, therefore, I want to get the
13 grant to be able to do X, Y and Z. Is there any criteria
14 that restricts this to people who actually are going to
15 try and produce a product?

16 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
17 If you're saying you wouldn't want the grant to be awarded
18 to someone who then subcontracts some of the actual work,
19 no, we haven't tried to restrict that.

20 Often different phases of a production line might
21 be subcontracted or done through an arrangement with a
22 different facility. And we've not in the past prohibited
23 that from being eligible.

24 COMMITTEE MEMBER EATON: But wouldn't we want to
25 get to the subcontractor.

1 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

2 They may be a manufacturing facility that's already in the
3 line using virgin products, and there's a entrepreneur
4 who's willing to take the risk of trying to break into the
5 use of recycled content products, and they can pay this
6 individual, let's say, to make a molded product or
7 something. But the risk is then on that entrepreneur,
8 that middleman, rather than on an established industry.

9 COMMITTEE MEMBER EATON: So it would be a subsidy
10 then, not a grant. If we're paying them to do something
11 because they don't want to produce it themselves, so it
12 would be a subsidy.

13 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART: I
14 would say most of these grants are an attempt to get an
15 industry to move into an area that's new to them or risky
16 to them. And in that form we are subsidizing on a short
17 term that risk.

18 CHAIRPERSON JONES: But I think -- if I can just
19 follow-up on your question.

20 A question came up, and it was portrayed
21 differently by different people in the last contract.
22 There were some people that utilized existing factories
23 but had to buy the forms, bought the feedstock, bought all
24 of that stuff, and then utilizing the press or utilized
25 this or that, because there was excess capacity available

1 within existing manufacturing. So it did grow the
2 marketplace because it put a product line out there. But
3 I heard it represented to me quite different than that by
4 different people.

5 So I think that -- you know, maybe it warrants
6 more discussion. But I personally think that if somebody
7 has got the capacity and it would go unused, rather than
8 building a new one, if we could utilize it to get into the
9 marketplace with a new product, that's probably going to
10 increase demand because it would have been a product line
11 that that manufacturer may not have wanted to do. But I
12 don't think that's what you're after.

13 COMMITTEE MEMBER EATON: No. What I'm after is
14 the infamous case of where we were chastised into one
15 situation and inferred we were going to destroy someone,
16 you know, and what have you. And actually what that was
17 was they no manufacturing capabilities themselves. What
18 I'm looking for is a disclosure of who are your partners
19 in this venture. And maybe that's not a criteria issue,
20 but it definitely is something where we're going to find
21 out whether there's viability for the money that we're
22 actually putting and putting forward.

23 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
24 It's already a requirement that such an arrangement be
25 described in the application. Now maybe staff has erred

1 in the past in not putting that directly in front of the
2 Board. If that's what you're asking for, we most
3 definitely in the future can provide any information about
4 subcontracting, any phase of the project in the agenda
5 item that describes the projects.

6 CHIEF COUNSEL TOBIAS: I think, as I have also
7 talked to some of the folks, we will be looking at the
8 application to make it clear who's applying in what and
9 what entity they're using. So are they applying as a sole
10 proprietor, are they applying as an LLC, are they applying
11 as a partnership; and if so, who are those other
12 anticipated partners, et cetera. And so I do think we can
13 get to that as well.

14 COMMITTEE MEMBER EATON: Because if there is for
15 any reason ever an issue that the grant somehow went awry,
16 we would want to know who we would go after. And in some
17 of the cases we may not actually have any recourse
18 because --

19 CHIEF COUNSEL TOBIAS: Well, I think there's
20 actually two different things. One is the one you're
21 talking about and one is the one that perhaps the Board
22 would like to know up front who those partners are, you
23 know, are they in partnership with somebody in the tire
24 area, is it -- you know, are their partners coming from
25 somewhere else, Canada -- you know, you may want to know

1 that. So I do think that --

2 COMMITTEE MEMBER EATON: I want to know it for
3 the new faces.

4 CHIEF COUNSEL TOBIAS: Right. So I do think it's
5 important to know. I do think that with the people that
6 we've contracted so far, we do know who their partners
7 are, and we have basically gotten that reaffirmation or
8 ratification of those agreements. But I do think you'd
9 want to know at both ends who those parties are.

10 CHAIRPERSON JONES: But a lot of people that
11 didn't get grants got it for that very reason, because
12 they didn't identify. Okay? And I think that's important
13 to know, too.

14 CHIEF COUNSEL TOBIAS: We're going to clarify the
15 application forms, so that's not --

16 CHAIRPERSON JONES: Okay. We have three
17 speakers.

18 I will call Dr. Barry Takallou.

19 DR. TAKALLOU: Board Member Jones and the rest of
20 the Board Members, I have a couple of comments on the new
21 scoring criteria, specifically on Criteria Number 9.

22 When commercialization -- the tire
23 commercialization grant is in the range of \$250,000 or
24 research and development. I believe research and
25 development is important. However, putting all of them in

1 one category, that's apples and oranges. When it comes in
2 front of a review panel, how would you compare an R&D
3 project with a commercialization project? And an R&D
4 project I believe the Board -- instead of putting it at
5 \$250,000 right off the bat into a high-risk project, which
6 usually are more high risk, it should be a phased
7 approach.

8 For instance, Phase 1 could be a pilot project
9 and Phase 2 is going to be commercialization.

10 So I wanted to make that comment on this area,
11 don't combine these two. Let the commercialization
12 contract compete with one another and R&D projects compete
13 against one another.

14 CHAIRPERSON JONES: Senator.

15 COMMITTEE MEMBER ROBERTI: I appreciate what
16 you're saying as far as the ease of scoring is concerned.
17 But we have found, I think, that -- we're trying to do a
18 couple of things. One, be right by the taxpayers and make
19 sure we deal with tried-and-true possibilities. And many
20 of those things are the kinds of commercialization that
21 have passed the test of time, but frankly are not
22 innovative and will not expand us into a breakthrough of
23 reducing tire waste.

24 On the other hand, the way you do that is through
25 research and development. But research and development is

1 also riskier.

2 So we have to do both. And we're better -- but
3 in these grants, it makes the scoring much more difficult.
4 And from the need of the person -- from the point of view
5 of the applicant, it may complicate matters for the
6 applicant. But from the point of view of what we need to
7 do to keep faith with the taxpayers, who both fund these
8 programs but expect us to move forward and to appreciate
9 the amount of tire waste, I think it makes sense to try to
10 do both. We'll see how it works.

11 What doesn't work, what doesn't work, is only to
12 deal with the tried-and-true programs, because they are
13 not breakthroughs. They only get us so far.

14 And what won't work is just to deal with research
15 and development, because you run just too high a risk that
16 too much of the money might get lost in something that is
17 terribly innovative, but it's not going to fly.

18 So hopefully what will work is a mixture of the
19 two. But just to rely on one or the other, I don't think
20 does work. Tires are accumulating faster than we can even
21 see them. And I just think our programs, if we don't look
22 to research and development, are just way too conservative
23 to deal with this burgeoning overload that we have of tire
24 waste.

25 CHAIRPERSON JONES: Mr. Paparian.

1 COMMITTEE MEMBER PAPARIAN: Yeah, thank you.

2 On that point, I mean I agree that research and
3 development is a vital component of our tire program. And
4 I've been in my own way trying to advocate for not only
5 research and development, but development of expertise in
6 California that will help pursue research and development
7 in the tire area.

8 However, in the five-year tire plan, we have
9 research and development activities, on the one hand, and
10 then separately we have tire product commercialization
11 activities. The pot of money here is out of the tire
12 product commercialization effort.

13 In the research effort we actually put out a
14 request a couple months ago for two and a half million
15 dollars of available research money, and 80 percent of
16 that money was unsubscribed. Two million dollars went --
17 they were grants. Two million dollars went unutilized.

18 That was troubling to me. But I think it may
19 mean that we need to redouble our efforts to get the
20 research pot of money out the door.

21 But this money --

22 COMMITTEE MEMBER ROBERTI: But the problem is in
23 the scoring. And in the scoring, the scoring is totally
24 skewed to those things that have had a past record in
25 sales, and that's going to simply be crum rubber. If we

1 want this program to be just exclusively a crum rubber
2 program with the same people getting the grants all the
3 time, let's go with it. But that's the way the program is
4 skewed right now.

5 I think we mean different things by research and
6 development. Research and development, yes, does mean
7 very, very innovative things. On the other hand, it may
8 mean something in which we are talking about a program or
9 a product which is new, which is innovative, may not
10 actually be at the research stage -- maybe that's the
11 improper use of the word, but may not be -- but is in a
12 position of about to be commercialized but isn't totally
13 commercialized. But I think we run the risk that we might
14 as well call this the Crumb Rubber Development Program and
15 the same four or five applicants can take turns coming
16 before us and getting all the money because we're the bank
17 for a couple of applicants.

18 And I'm not faulting them. If I wanted them, I'd
19 be here, too. More power to them. They've seen their
20 niche and they're going get it. And I think that's great.
21 It's an American entrepreneurial system. But I don't
22 think we should be complicit in that.

23 COMMITTEE MEMBER PAPARIAN: I think that -- I
24 mean, I agree that providing funds for innovative product
25 commercialization -- I'm with you 100 percent on that.

1 It's just the research, the more academic side of things,
2 I think we do have a program for that, we need to beef up
3 that program, but that's not part of the tire product
4 commercialization funds. It's part of a different pot of
5 money.

6 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

7 We could address this issue I think with a wording change.
8 Perhaps we should call it the Commercialization and
9 Innovative Technology Grant Program, and then not go so
10 far down the road towards research, if that would make the
11 --

12 CHAIRPERSON JONES: Yeah, but your scope of work
13 makes it very clear. I mean, if you read the scope of
14 work, it says "evidence of the likelihood of success of an
15 R&D into a waste product commercialization and innovative
16 waste tire recycling technology." It has narrowed it that
17 it is not basic R&D; it is R&D that is at a point that may
18 need a little bit more work to get into -- and part of it
19 does become product commercialization. The Senator and I
20 saw three projects like this, I think, that were very,
21 very close, that could have been new markets and new
22 stuff.

23 I mean, I think that commercialization gets a
24 huge piece of this, but R&D -- I mean, for the lack of
25 another word, I think what this says is there are some

1 technologies out there that need a kick to be fully
2 commercialized, that don't go to Stage 1 R&D, but actually
3 need that extra kick. And I think that falls within tire
4 commercialization clearly because it's not a basic R&D
5 project.

6 And, you know, it's going to be in the scoring,
7 it's going to be when you see the proposals.

8 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

9 If I understand correctly, I think the intent is to reach
10 out to those slightly more risky operations, something
11 that someone has developed a product over the years in
12 their garage, but unlike Hewlett & Packard, they don't
13 have funding from the banks to roll it out yet into a
14 full-scale company, and that this is a role the Board
15 could play.

16 You know, if there's some term other than just
17 pure "research" that we could apply to this --

18 CHAIRPERSON JONES: See, but I don't think you
19 say research. I think you said there's 20 points if it's
20 evidenced that it's going to be getting into full
21 commercialization, you know.

22 Anyway, go ahead, Mr. Takallou.

23 DR. TAKALLOU: Yes, I have a second comment.

24 Just a definition of molded rubber product. It says crum
25 rubber derived product that is from using a mold or

1 pressure. I think this is very restrictive. To suggest
2 that -- I'm not a molded product, but I know -- I deal
3 with them all the time. We have customers, they do
4 continuous work. They don't put in the mold or different
5 ways of making rubber-molded products these days.

6 So I think we should not restrict the definition
7 to using mold and pressures. Some products you can make
8 it with heat. Some products you can make it with, you
9 know, a different way.

10 So if you can leave that open -- as Senator
11 Roberti mentioned, let's leave that to the market.
12 Because if the focus is to be diverting tires from the
13 landfill and make it a rubber product, so why does it has
14 to be restricted to only pressure-type molding?

15 CHAIRPERSON JONES: What's the other type that
16 isn't pressure type?

17 DR. TAKALLOU: There are ways they make the
18 molded product -- they make rubber products with heat, you
19 know. They use heat and rubber together to make products.

20 CHAIRPERSON JONES: So that binds it. But what
21 gets it in a consistent form? Two rollers?

22 DR. TAKALLOU: It's continuous.

23 CHAIRPERSON JONES: Does it go through a roller?

24 DR. TAKALLOU: It doesn't go through a roller.
25 It's a continuous process.

1 CHAIRPERSON JONES: It just keeps stretching out
2 until it hits a certain thing. There's nothing there that
3 measures it.

4 DR. TAKALLOU: Yeah. Then they cut it.

5 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
6 You're talking about sort of a poured product?

7 DR. TAKALLOU: Yeah, poured product.

8 CHAIRPERSON JONES: So you could add the word
9 "forms," right?

10 DR. TAKALLOU: Well, I was thinking we can delete
11 the word of "pressure," you know -- pressure and --

12 CHAIRPERSON JONES: Somehow I think you need to
13 research that, Martha, because that kind of scares me,
14 that --

15 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
16 I'll admit some uncertainty here.

17 CHAIRPERSON JONES: We're missing something here
18 with Dr. Takallou. You've obviously -- what are we
19 missing here? For us to take out that word, what are we
20 missing?

21 DR. TAKALLOU: What we are missing there,
22 products.

23 CHAIRPERSON JONES: Now, tell me what we're
24 missing. I mean, you're asking us to take out what's
25 normally considered a definition for molded product and

1 change it to something else. What is the reason for that?

2 DR. TAKALLOU: Because there are products they
3 use recycled crum rubber and they don't use --

4 CHAIRPERSON JONES: But aren't they a molded
5 product?

6 DR. TAKALLOU: They are a product -- they're a
7 rubber product.

8 CHAIRPERSON JONES: Okay. So if I take a bunch
9 of rubber, bunch of buffings, whatever, mix it with a
10 binder and throw it out on a field or on a road, is that
11 considered a molded rubber product?

12 DR. TAKALLOU: No. It gets mixed with other
13 products.

14 CHAIRPERSON JONES: Oh, like asphalt shingles or
15 stuff like that that doesn't get put down?

16 DR. TAKALLOU: It can be.

17 CHAIRPERSON JONES: Leave it. I mean -- okay.
18 That's fine. We'll take your --

19 MR. WINTERS: May I inject here just a moment?

20 CHAIRPERSON JONES: Certainly.

21 MR. WINTERS: Thank you.

22 There are many other ways in which to make rubber
23 products other than molding them, sir.

24 There are extrusions. The leaky hose is a very
25 good example of that. And there's a lot of that being

1 made and sold today using a lot of crum rubber.

2 There are pour-in-place products. Yes, they may
3 be formed, but they may not need the pressure necessary to
4 mold them, so to speak.

5 There are rotational devices that can create
6 room-temperature vulcanizing, RTV types of technology.

7 I think to restrict it strictly to molded rubber
8 products is too restrictive in order to allow for the
9 commercialization of other rubber products that will use
10 California crum rubber tires.

11 CHAIRPERSON JONES: Thank you.

12 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
13 One possibility, we could broaden the definition of molded
14 rubber to specifically include extruded rubber products.
15 At the staff level I would recommend against going so far
16 as to have pour-in-place and other such generally formed
17 products included. I think we've addressed that market
18 quite successfully in our playground cover and the
19 Recreational Track and Surfacing Program and would not
20 want to see money being put in to enlarge quantities at
21 both ends of the same thing.

22 CHAIRPERSON JONES: I agree.

23 Okay.

24 DR. TAKALLOU: Thank you very much.

25 CHAIRPERSON JONES: Thank you.

1 Mark Korte.

2 MR. KORTE: Thank you, Mr. Chairman, Members of
3 the Board. I'm Mark Korte with Tri-C Tire Recycling. We
4 are a tire recycler, collector, and granulator, processor,
5 whatever you want to call us, in northern California.

6 I appreciate the fact that the Board is trying to
7 work to tighten some of the criteria for the
8 commercialization grants. I have argued and will continue
9 to argue that commercialization grants are not working in
10 their intended purpose of diverting tires from landfills,
11 and they're causing many of us problems with the markets
12 being skewed or damaged because of the commercialization
13 grants.

14 We're doing a lot in the private industry to help
15 move forward some of the things that are currently going
16 into landfills. As a matter of fact, I hope sometime in
17 the next few months to -- because of some efforts that we
18 have made as a company and materials that we've given to
19 innovators, I think we're going to be able to find a good
20 usage for fiber in tires. We might be able to divert a
21 good portion of that that's going into landfill currently.

22 These are the things we're working on on our own
23 and hope to accomplish without any grant money; or maybe
24 start it and a little grant money to get into innovation
25 or research and development, whatever you want to call it,

1 that would be fine.

2 But I guess what I'm specifically talking about
3 is -- and I'll hand out a letter so I don't have to go
4 into great detail. We had a competitor close by that
5 received a total \$500,000 in grants this last go round.

6 And essentially what they've been doing with the
7 grants is using that money to help subsidize their
8 collection prices. Now, that might be welcomed initially
9 by the people that they're lowering the prices to. But
10 their sole purpose is to try to eliminate their
11 competition, as an end result. And, of course, the prices
12 would substantially go up from there.

13 Now, the people that they're hurting the most is
14 people like our company, that's never buried landfilled
15 tires. We've granulated. We've done civil engineering.
16 We've never buried. Barrier Tire Recycling, I've got a
17 letter from them, that are also a granulator; and another
18 gentlemen down in the Gilroy area, West Coast Rubber
19 Recycling.

20 So they're essentially taking the Board's money
21 and reducing collection fees below -- or at or below their
22 cost and disrupting the market.

23 That's all I have.

24 CHAIRPERSON JONES: Thanks, Mark.

25 And then Bruce Robeck.

1 MR. ROBECK: Bruce Robeck, California Tire
2 Recyclers. And, boy, I'll bet you're glad you'll not see
3 me anymore tonight.

4 It's a little hard to kind of delve into this
5 particular agenda item because so much is left off the
6 agenda item, including general criteria. And it's unclear
7 to me to the extent that some of the descriptive
8 information is, in fact, a subject for Board review and
9 adoption.

10 I would point out in that vein that there is one
11 item, the mention of the matching funds, which I have made
12 a presentation to Mark Leary, about use of escrow accounts
13 including matching funds in other grants and award
14 programs conducted by other agencies of the State, that
15 has the real value of assuring that the funds are being
16 spent for the purposes for which the grants or awards are
17 made and, in addition, assuring that the matching fund
18 process is, in fact, real and not a subterfuge.

19 Other comments have been made already, so I'll
20 skip over those.

21 I'd like to point out -- and I do think the grant
22 process is a blind review process; is that correct -- that
23 in your five-point consideration of prior experience, that
24 that requires knowledge of who the applicants are.

25 So that part of the process cannot be part of the

1 regular scoring since it's by definition not a blind
2 review.

3 CHAIRPERSON JONES: It will be in a form though
4 to check.

5 MR. ROBECK: It could be a form, that is correct.

6 I would point out, given some of our discussions
7 over this last grant cycle, that defining who is a new and
8 who is an ongoing applicant has been difficult; that the
9 potential of this is to spawn off additional entities that
10 are, in fact, not really new applicants but simply
11 variations on a theme. And so I think some thought should
12 be given to that particular element of the scoring system
13 so that it's not simply producing results that you did not
14 intend.

15 It also might be wise, since you've got three
16 different fiscal years included, to include a different --
17 a weighted system, because you logically have someone who
18 was a grant recipient in the first year and not in the
19 next two, someone who is a grant recipient this last year
20 and not in the first two, someone who is a grant recipient
21 in all the years, or someone who was not a grant recipient
22 in any of them. And so it seems to me that those
23 characters, those applicants are in a different situation
24 in terms of scoring, and to assign the same point value to
25 all of those cases would kind of potentially distort the

1 opportunities that each provide.

2 Thank you.

3 CHAIRPERSON JONES: That's a good idea.

4 All right. That was our last speaker.

5 Do members have any comments at this point?

6 Mr. Paparian.

7 COMMITTEE MEMBER PAPARIAN: Yeah, I'm sorry.

8 Again, I don't want to let go of this research and
9 development issue. I mean to me R&D implies something
10 very specific.

11 In the R&D portion of our five-year plan we're
12 trying to move towards peer review of R&D. As I read the
13 item as it's written, if someone were to come in with a
14 new technology, a pyrolysis or a devulcanization
15 technology, say, and they had four or five letters from
16 Ph.D's supporting that, that would be evidence of the
17 likelihood of success.

18 CHAIRPERSON JONES: Because a Ph.D said it would?

19 COMMITTEE MEMBER PAPARIAN: Maybe. They'd get 20
20 points. They'd get 15 up above. And they'd be there with
21 what to me is a research project which we ought to be
22 evaluating in the context of our Research Program, not our
23 Product Commercialization Program.

24 I think Martha was starting to go in the right
25 direction a few minutes ago when I brought this up in

1 terms of just rephrasing what's meant here so you're
2 really getting at those innovative technologies that are
3 just on the cusp of commercialization as opposed to more
4 pure research and development, which is important, but
5 which is covered elsewhere in our five-year tire plan.

6 CHAIRPERSON JONES: But the scope of work, Mr.
7 Paparian, under 9, where it says, "evidence of the
8 likelihood of success," that is not what a preliminary R&D
9 project would do. I mean, you would never know from a
10 preliminary R&D project. You'd only know that it had a
11 potential for success if it had been tested. And they may
12 be needed to go into the last phase prior to
13 commercialization -- full blown commercialization. That's
14 not R&D.

15 That's further -- it is R&D because it's further
16 product refinement. But when you look at the potential of
17 water filters or, you know, catch basins that empty into
18 our rivers -- I mean, a whole lot of products that are
19 close but they're not there -- they fall into a category,
20 because they are not fully commercialized, as being
21 something different. And part of it is the last stage of
22 an R&D. But you want to eliminate those so that we can
23 stay with molded rubber products. And I don't think
24 that's your intent.

25 COMMITTEE MEMBER PAPARIAN: I'm not going

1 strictly with molded rubber products, no, not at all. But
2 I think we do have an R&D program and we ought to respect
3 the R&D program and the types of third-party peer review
4 and other criteria that we want to apply to our research
5 and development efforts.

6 CHAIRPERSON JONES: The only R&D program that we
7 had was to the waste to energy -- I mean, the tire energy
8 ones.

9 COMMITTEE MEMBER PAPARIAN: So far.

10 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
11 There was another one we didn't get out the door, and that
12 was a civil engineering research -- no, I'm sorry, that
13 was done. The Civil Engineering Research Project was
14 done. It was the Civil Engineering Market Development
15 that we didn't get out the door.

16 CHAIRPERSON JONES: So the only R&D was tied to
17 the --

18 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
19 That was a large scale. There was the pyrolysis and
20 devulcanization reports that we didn't get to this year,
21 but we're hoping to pick up next year because they were a
22 fairly low funding level and we think we can find some
23 funds for that.

24 CHAIRPERSON JONES: Right.

25 COMMITTEE MEMBER PAPARIAN: But we're expecting

1 to spend \$3 million in each of the next two fiscal years
2 on research and development. And that's a good thing. We
3 should be spending money on research and development.

4 CHAIRPERSON JONES: Right.

5 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART: I
6 think the issue revolves around how much risk do we want
7 to entertain with this particular grant program. You
8 know, does the Board wish to do something that might not
9 work? You know, we might get to the end of the grant
10 period and the grant recipient has done his or her best to
11 carry it off and it didn't work. Is that acceptable or
12 not?

13 You know, did we learn something from it? If it
14 is acceptable, then that might give it a little more of
15 that research slant that we're trying out a question for
16 the first time. If the Board wants this program to only
17 support those things that really, really, really are sure
18 of success, you know, because they've been done before,
19 they're tried and true, we're just expanding it, then we
20 would drop that part out. But then I think we would have
21 to recast some of our Research and Development Program to
22 venture more into that commercialization field.

23 So there's sort of a gray line between the two,
24 and it's wherever the Board wishes to draw it.

25 CHAIRPERSON JONES: Can I ask a question, Martha?

1 Under this product commercialization there is no
2 exclusion of tires for energy or anything like that?

3 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
4 Nothing is excluded. It's that point distribution where
5 we were trying to express a preference on the part of the
6 Board. Twenty points for molded to five points for, you
7 know --

8 CHAIRPERSON JONES: Right.

9 So we don't have -- there's no obligation here --
10 if we were to get ten projects in that were all for
11 energy, there's nothing that precludes us from doing that?

12 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
13 Correct.

14 COMMITTEE MEMBER PAPARIAN: Just for
15 clarification. There's nothing that precludes this grant
16 cycle going strictly for those projects. But there is a
17 hierarchy that we're supposed to follow in the tire
18 product commercialization per 876. And if we wound up
19 spending the preponderance of money on energy projects, I
20 think we would be open to fair criticism and more that
21 we're not adhering to 876.

22 CHAIRPERSON JONES: Okay. I mean, waste tires
23 for energy are part of the hierarchy. But if -- I guess
24 my question was, if this goes out and, let's say, six of
25 the ten were energy projects, then that would be -- that

1 would meet the criteria -- or four out of the ten, it
2 would --

3 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

4 The energy projects would qualify. But they would be at a
5 disadvantage to any molded rubber because of the points.

6 However, if not enough molded rubber or crum
7 rubber projects apply to use all the funds, then obviously
8 those funds would be made available to the lower scoring,
9 yet passing, energy projects.

10 COMMITTEE MEMBER ROBERTI: I tend to think the
11 scope of work language that Chairman Jones pointed out
12 really handles some of the concerns. But, Martha, you
13 were talking about language that sort of modulated the
14 research and development and put it more into this
15 on-the-cusps commercialization. And if you could work
16 with that kind of language for the Board meeting, that
17 could end up solving everybody's problem.

18 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

19 We could do that. I would certainly like any
20 suggestions from members and their offices. But if that
21 would help focus this away from the pure theoretical
22 research and get it more to applied research and
23 commercialization, then we could --

24 COMMITTEE MEMBER PAPARIAN: Yeah, I think the
25 term "research and development" has very specific meaning

1 to me and to perhaps others who have been involved in, you
2 know, science in the past in one way or another. R&D
3 means something specific, but maybe that's not the
4 intention of where you're going with this. And certainly
5 from Mr. Jones' description of the type of on-the-cusp
6 technologies, you know, I think that that's fine to
7 include those in this grant program.

8 And so if we can come up with that language that
9 takes the stated intent but removes the words "R&D" maybe
10 we can get there.

11 COMMITTEE MEMBER EATON: Applied technologies?

12 CHAIRPERSON JONES: Applied technologies will
13 work. You know, because what I want to just caution us
14 about is a criticism from those existing businesses that
15 will say, "These guys aren't ready to be totally
16 commercialized. How could you give this money to them?"

17 And that definition I think worked for that.
18 Because, clearly, this was a direction that was given in
19 the Board meeting from Senator Roberti and endorsed by
20 myself, having gone through the scoring. We felt
21 compelled not to lean towards ones that were very, very
22 close, but could have had a huge impact for us statewide,
23 potentially, potentially. I'm not sure that they would
24 have. But they were awfully close, don't you think so?

25 COMMITTEE MEMBER ROBERTI: Yeah, absolutely. I

1 think -- the way the language of the scoring was, we will
2 have -- I mean, you know, the only thing we'll be doing is
3 rubberized asphalt -- well, one of the few things we'd be
4 doing -- and then pray that the Department of
5 Transportation gets enlightened to use it at some point.
6 It's just the -- we aren't -- I mean not wanting to be
7 sarcastic or anything because I totally understand we
8 don't want to get at only research and development that's
9 highly theoretical. We're talking about -- applied
10 technology, I think we're all sort of agreeing, is a great
11 word. I think Martha and Danny have both spoke to it, and
12 I think is a great word.

13 But the scoring was just utterly skewed to those
14 things that always get the victories because they're the
15 things that are commercialized. And that has a problem.
16 It's not innovative. It doesn't get us to the point of
17 doing new and revolutionary things that have a very good
18 chance of succeeding. And the other problem is, the same
19 people in the field. And, you know, we just become their
20 bank. And, you know, if I were in that field, I'd be here
21 every week, too, because, I mean, there's a lot of money
22 there and I don't blame them.

23 CHAIRPERSON JONES: Okay. Mr. Paparian.

24 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

25 Is there a desire on the Board's part to alter the molded

1 rubber definition to include the extrusion? Is that -- I
2 mean, on the Committee's -- is that anything you're
3 wanting to go towards or not?

4 CHAIRPERSON JONES: "Extrusion" doesn't bother
5 me. What I don't want to do is take away the "pressure"
6 or the "formed", because what I don't want to see is a
7 product that just gets kind of thrown together and they
8 say, "There, that's a molded rubber product."

9 And I think you're right in your evaluation that
10 we give an awful lot of money to pour in place. All that
11 money we put into the schools, we do it so that these
12 folks have market share. So I think you'd need to stay --
13 just add "extruded" in my mind. Is that okay?

14 COMMITTEE MEMBER ROBERTI: Fine.

15 CHAIRPERSON JONES: Is that okay?

16 COMMITTEE MEMBER EATON: Yeah.

17 CHAIRPERSON JONES: Okay. That should cover it.
18 The "extruded" would cover. But I'm not going to -- I
19 mean we for the pour-in-place stuff.

20 All right. Mr. Paparian.

21 COMMITTEE MEMBER PAPARIAN: Well, I was just
22 going to say, there are some changes coming, so I'm not
23 sure -- I'm not quite ready to vote. I think maybe we
24 might want this to come to the full Board meeting with --

25 COMMITTEE MEMBER EATON: We would want to share

1 this with our colleagues, I believe.

2 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:

3 So much fun.

4 COMMITTEE MEMBER EATON: We would not want them
5 to feel left out.

6 CHAIRPERSON JONES: Okay. But we are in general
7 agreement based on the discussions we've had basically
8 that we're going to get some resolution on a couple of
9 these items?

10 COMMITTEE MEMBER PAPARIAN: We want to move
11 forward, is that why you are saying --

12 COMMITTEE MEMBER ROBERTI: -- agreements all of
13 the English --

14 CHAIRPERSON JONES: Only items that we have left
15 are --

16 COMMITTEE MEMBER EATON: We can move it to the
17 full Board with a favorable outlook.

18 CHAIRPERSON JONES: With a favorable outlook.
19 That'll work.

20 And you're aware of the issues that still are
21 open, Martha?

22 SUPERVISING WASTE MANAGEMENT ENGINEER GILDART:
23 Yes.

24 CHAIRPERSON JONES: All right. That's our last
25 item. And most of us --

1 COMMITTEE MEMBER EATON: I recommend you speak
2 with Mr. Hart, our resident real genius. I think it
3 might be of help to us on commercialization.

4 CHAIRPERSON JONES: Anybody in the public have
5 anything they want to add?

6 Okay. This Committee is closed.

7 Thank you staff. Nice job, Peggy. Thank you for
8 filling in for Jeannine.

9 (Thereupon the California Integrated Waste
10 Management Board, Special Waste and Market
11 Development Committee meeting adjourned at
12 5:50 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Managemebt Board,
7 Special Waste and Market Development Committee meeting was
8 reported in shorthand by me, James F. Peters, a Certified
9 Shorthand Reporter of the State of California, and
10 thereafter transcribed into typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 25th day of June, 2002.

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23 JAMES F. PETERS, CSR, RPR
24 Certified Shorthand Reporter
25 License No. 10063